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LOK SABHA

The following report of the Joint Committee on the Bill to provide for the development of Delhi according to plan and for matters ancillary thereto was presented to Lok Sabha on 11th November, 1957:—

Composition of the Joint Committee

Shri Govind Ballabh Pant—*Chairman*.

MEMBERS

Lok Sabha

2. Dr. P. Subbarayan
3. Shrimati Sucheta Kripalani
4. Shri Radha Raman
5. Choudhury Brahm Perakash
6. Shri C. Krishnan Neir
7. Shri Naval Prabhakar
8. Shrimati Subhadra Joshi
9. Shri P Hanmanth Rao
10. Shri Kailash Pati Sinha
11. Shri Shree Narayan Das
12. Shri Satis Chandra Samanta
13. Shri Tayappa Hari Sonavane
14. Shri Mathew Maniyangadan
15. Pandit Jwala Prasad Jyotishi
16. Shri Sunder Lal

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17. Shri Ram Shanker Lal
 18. Shri Sumat Prasad
 19. Shri C. Nanjappan
 20. Shri Mahadevappa Rampure
 21. Shri Jaswantraaj Mehta
 22. Shri Shivram Rango Rane
 23. Shrimati Renu Chakravartty
 24. Chaudhary Pratap Singh Daulta
 25. Shri Surendranath Dwivedy
 26. H.H. Maharaja Pratap Keshari Deo
 27. Shri Ignace Beck
 28. Shri Arjun Singh Bhadauria
 29. Shri D. R. Chavan
 30. Shri B. Pocker
 31. Shri B. N. Datar

Rajya Sabha

32. Shri M. C. Shah
33. Shri Deokinandan Narayan
34. Shri Santosh Kumar Basu
35. Shri Awadheshwar Prasad Sinha
36. Shri Algu Rai Shastri
37. Shri Hira Vallabha Tripathi
38. Shri Onkar Nath
39. Begum Saddiqa Kidwai
40. Shri V. L. S. Datta Ram

Report of the Joint Committee

I, the Chairman of the Joint Committee to which the *Bill to provide for the development of Delhi according to plan and for matters ancillary thereto was referred, having been authorised to submit the report on their behalf, present this their report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 7th September, 1957. The motion for reference of the Bill to a Joint Committee of the Houses was moved by the Home Minister, Shri Govind Ballabh Pant, on the 9th September, 1957 and was discussed in the Lok Sabha and adopted on the same day.

3. The Rajya Sabha discussed and concurred in the said motion on the 13th September, 1957.

4. The Committee held five sittings in all.

5. The Committee at their first and second sittings, held on the 9th and 10th October, 1957, had a preliminary discussion on the provisions of the Bill.

6. At the third sitting held on the 11th October, 1957, the Committee heard the evidence tendered by Shri R. N. Agarwala, President, Delhi Municipal Committee.

7. The Committee have decided to lay the evidence tendered before them on the Table of the House *in extenso*.

8. The Committee considered the Bill clause by clause at their sitting held on the 19th October, 1957.

9. One Memorandum from the Delhi State Housing Association, Delhi on the Bill was received by the Committee and was placed in the Parliament Library.

10. The Committee considered and adopted the Report on the 8th November, 1957.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

12. *Clause 2.*

Item (f).—In this definition “water supply” has also been included.

*Published in Part II, Section 2 of the Gazette of India Extraordinary, dated the 7th September, 1957.

Item (j).—The definition has been given in full instead of making a reference to the Punjab Act.

13. *Clause 3—sub-clause (3).*—The Committee feel that the membership of the Delhi Development Authority should be raised by four members, two to be chosen by the Delhi Advisory Committee and the remaining two to be nominated by the Central Government.

The Committee further feel that from sub-clause (3) (b) the words “from amongst officers of that Government” should be omitted.

The clause has been amended accordingly.

Sub-clause (7).—The Committee feel that the term of office of the representatives of the Municipal Corporation should be raised to four years.

The clause has been amended accordingly. The other amendments made in the clause are of a drafting nature.

14. *Clause 5.*—The Committee feel that the term of office of the elected members of the Advisory Council should be raised to four years.

The clause has been amended accordingly. The other amendments made in the clause are of a consequential or drafting nature.

15. *Clause 10 (New clause).*—The Committee consider that before preparing any plan finally, and submitting it to the Central Government for approval, the Authority should publish the draft plan for inspection, inviting objections and suggestions.

The new clause has been inserted accordingly laying down the procedure to be followed in the preparation and approval of plans.

16. *Clause 12 (Original clause 11)—sub-clause (5).*—The Committee feel that any development work already begun by a local authority should also be exempted from the requirement of the clause.

The clause has been amended accordingly.

17. *Clause 13 (Original clause 12).*—The Committee feel that if any application for permission is rejected by the Authority, the reasons should be recorded in writing.

The clause has been amended accordingly.

18. *Clause 14 (New clause).*—The Committee feel that it should be specifically provided in the Bill that after the coming into operation of any of the plans in a zone, no one should use any land or building otherwise than in conformity with the plan, save as expressly permitted.

The clause has been inserted accordingly.

19. *Clause 29 (Original clause 27).*—Sub-clause (2) has been inserted to provide for punishment in cases where any land or building is used in contravention of clause 14.

20. *Clause 35 (Original clause 33).*—The clause has been recast to make the intention clear.

21. *Clauses 37 to 40 (Original clause 35).*—The Committee feel that betterment charges should be determined once for all and should not be spread over a term of years and that in case the owner of the land refuses to accept the betterment charges determined by the Authority the matter should be referred to a board of arbiters for determination.

Provision has been made in this respect in these clauses.

22. *Clause 53 (Original clause 48).*—The Committee feel that it should be made clear that nothing in the Bill affect the operation of the Slum Area (Improvement and Clearance) Act, 1956.

The Clause has been amended accordingly.

23. *Clause 56 (Original clause 51).*—The Committee feel that the rules under the Act should lay down the qualifications and disqualifications applicable to members of the Authority or the Advisory Council.

A new item has accordingly been inserted in this clause.

24. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
The 11th November, 1957.

GOVIND BALLABH PANT,
Chairman,
Joint Committee.

Minute of Dissent

We append this note of dissent because we strongly oppose the basic scheme of things underlying this Bill, *i.e.*, the setting up of a separate body to undertake the development of Delhi—a job primarily that of the Municipal Corporation of Delhi. This dual authority we consider as harmful both for the development of healthy local self-government as well as for the development of Delhi itself.

The underlying principle of the Bill is that the initiative for towns planning has to come “from the top” rather than “below” which is the local body. This superior position is wrong in principle. We oppose this.

The argument is often advanced that local self-governments have failed in development work. But the reason for this is cogently put by B. R. Kagal in his “Report on Town and Village Planning in India” [Health Survey & Development (Bhore) Committee Report, 1946 Volume III, p. 85], where he says:

“If local self-governments have failed, the governments’ share in that failure due to errors of omission and commissions cannot be entirely disowned.” For example, slums are a result of industrial development. The site for the factory is planned, not the housing for labour. Moreover local governments are not provided with necessary finance and the technical know-how. If government would give the Corporation such aid as it is going to give to the Delhi Development Authority, developmental work would go on far more efficiently.

Bhore Committee has discussed this question in detail, and has gone into the functions of the Improvement Trusts both in Calcutta and in Delhi and has come to the conclusion that separate existence of these Trusts results in the maintenance of separate supervisory staffs by the two authorities for the exercise of similar functions....” (Vol. II, p. 225). Having examined the question, the Bhore Committee comes to the firm conclusion that “Housing is but a part of the wider problems of environmental hygiene for the solution of which the local health authority must remain primarily responsible”. (*Ibid.* page 226.) All that the Bhore Committee conceded to the Provincial Governments was that they had to decide whether “the present system” of separate Improvement Trusts “should continue for the time being” and, therefore, there could be no question of perpetuating them.

Dealing with the situation in foreign lands, Bhore Committee tells us (Volume II, page 238, para 22) that "in England, local authorities have been responsible, for nearly a century, for the control of state aided housing". A similar position obtained in Holland and Germany where the Corporations were responsible for all housing.

The Local Self-Government Expert Committee appointed by the Government of U.P. emphatically recommended that "all improvement trusts in the province should be abolished and the provisions of the Improvement Trusts Act should be incorporated in the Municipalities Act....." (as quoted by Shri Bartiwala in his minutes of Dissent—Local Finances Enquiry Committee Report, page 385).

The Kale Committee appointed by the Government of Bombay to enquire into the affairs of Local Bodies and the Administrative Enquiry Committee have both strongly recommended that these separate *ad hoc* bodies should go and the finances placed at their disposal should be transferred to the statutory bodies concerned.

Venkatappa Committee on the integration and coordination of local bodies in Mysore recommends more or less to the same effect.

The Corporation of Calcutta Investigation Commission (1950) also recognised the fact that Improvement Trusts were more "adjuncts to the corporation" and were performing the duties which are legitimately the domain of the municipal authorities.

Delhi Municipal Organisation Enquiry Committee also said that the existence of separate *ad hoc* Improvement Trust led to the "possibility of the weakening of the general municipal government structure in respect of the services left to the direct control of the municipal authority through lack of public interest."

The minute of dissent attached to the above report by Sir Arthur Dean, Mr. V. S. Mathur, and Mrs. Hanna Sen also emphasises this point and it says, "Obviously however, their (*ad hoc* bodies') existence would militate against the popular control for the functions are primarily and patently municipal."

Thus we firmly believe in what eminent authorities on local self government have to say that given the aid which the Government generally extended to Improvement Trust or is going to extend to the Delhi Development Authority, such service could be handled more efficiently by the Delhi Municipal Corporation itself.

The experience of Bombay teaches us that a separate existence of Improvement Trusts was far from being helpful, a positive obstacle in the way of Improvement. The Bombay Corporation has therefore assumed the sole responsibility for the obligation of the city Improvement Trust and now an "Improvements Committee".

an authority under the Corporation does the job. The dual authority has been done away with.

The experience in Delhi itself is sufficiently bitter. The grievances against Delhi Development (Provisional) Authority have been mounting. The civic Affairs Committee memorandum has emphatically demanded that Corporation should take over the Development Authority.

Even the Jaundice Committee Report has suggested in section 91 (page 41) that control on construction of Buildings should vest in the Corporation.

However, existence of a dual authority could in no way be justified not only because it cuts across the roofs of the authority of Local Self-Government but also because it leads to bureaucratic red tape and unnecessary friction between the two authorities. We therefore oppose the very scheme envisaged in the bill. Our opinion is that Development should be an authority under the Corporation and not a separate body.

If there must be a separate body for Development as envisaged in the Bill, our suggestion would be to see that this body should represent public opinion to the largest measure possible. This was also the opinion of the Delhi Improvement Trust Enquiry Committee: "The local bodies should of course be well represented on the Authority. Since the primary aim of city planning is social and convenience and utility of the largest number is the main test of all city planning, public opinion, should be well represented on the Authority through a non-official majority." It is for this reason that we would suggest the Advisory Council as envisaged in the Bill, should become the authority with the inclusion of seven instead of four members to be elected from among the Corporation Councillors and including all the members elected from Delhi to Lok Sabha and Rajya Sabha. The Authority as envisaged in the Bill should become the executive or standing committee of the Authority as suggested by us.

The main objection to the present constitution of the Authority as envisaged in clause 3, is that overwhelming weightage is in the hands of nominated members. We had suggested that at least 5 members should be elected from among the councillors of the Corporation from among whom at least one representative should come from the rural areas, two other members representing New Delhi and Cantonment areas should be elected from among the 10 electoral college members as constituted under clause 506 of the Delhi Corporation Bill.

In Chapter III, clause 7 the time limit for submission of Master Plan should not be left vague and "within a period of one year" or words to that effect should be inserted, because this has already been long delayed.

In Chapter IV, clause 13, we consider that after refusal of permission to develop land in a development area, the person concerned should have the right of appeal to some body other than the Authority.

In Chapter V we would like to stress that on question of giving compensation special consideration must be given to the small agriculturists whose land is his sole means of livelihood and those of small means who owns a piece of land and building which they use as their place of residence. While agreeing that the compensation to be paid to the richer section should be nominal when acquisition is for public purposes, the past experience has been that often the poor are left completely destituted while the richer classes by their social and economic pull are able to enter prolonged litigation and by other means get their compensation enhanced. Therefore we had suggested statutory protection in Clause 14 after (5) (a) after the words "no allowance shall be made on account of acquisition being made compulsory" the following be added: "except in cases where (1) the owner is an agriculturist and the entire land on which depends his sole means of livelihood is acquired or where any portion of land belonging to an agriculturist whose total ownership of land does not exceed ten acres and (2) the owner possesses a sole house not exceeding Rs. 10,000/- in value of land and building wherein he resides and uses as his dwelling place."

We feel strongly that the policy of slum clearance whereby slums are demolished and slum dwellers forced miles out far from their natural areas of livelihood is a wrong development policy, and as far as possible cheap tenements should replace slums where the slums dwellers can get accommodation within their means. We therefore desired Clause 21 (2) to be amended so that after line 15 these words are added: "and in the case of slum tenants, the Authority shall as far as possible erect cheap labour tenements for their housing at rates within their means, or if necessary at subsidised rates". After line 21 the following should be added:

"Provided that in the case of slum clearance those who are owners of buildings valued at less than Rs. 10,000/- which was the only building they possessed and which they used as a dwelling place, he should be given the land at a subsidised rate."

The Birla Committee has pointed out how the Delhi Improvement Trust allowed lands to fall into hands of speculators because

nothing was permitted to be done unless an immediate concrete financial return at highest possible rate was forecast. They also stated that "if slums are cleared and new standard tenements are constructed, the dehouseed people will not be in a position to occupy them without assistance. What is therefore essential is to build subsidised houses costing in rent not more than Rs. 10/- or Rs. 12/- per month. Until this happens the slums can never be cleared".

Regarding betterment levy we are against the principle of charging this before completion of betterment when the benefits are already being enjoyed to stretch this to include schemes which have not been completed is incorrect, and we therefore oppose this principle.

Lastly regarding the finances of the Authority while we firmly believe the Corporation should not be denuded of any one of its resources, there should be statutory guarantee for transfer of certain returns from duties and taxes to the Authority from Central Government, and not leave it entirely to a scheme of things where for every amount the Authority has to go to Government.

NEW DELHI;
The 9th November, 1957.

RENU CHAKRAVARTTY.
NARSING RAO DESHMUKH.
RAJBAHADUR GOUR.
PRATAP SINGH DAULTA.

THE DELHI DEVELOPMENT BILL, 1957

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

THE DELHI DEVELOPMENT AUTHORITY AND ITS OBJECTS

3. The Delhi Development Authority.
4. Staff of the Authority.
5. Advisory Council.
6. Objects of the Authority.

CHAPTER III

MASTER PLAN AND ZONAL DEVELOPMENT PLANS

7. Civic survey of, and master plan for, Delhi.
8. Zonal development plans.
9. Submission of plans to the Central Government for approval.
10. Procedure to be followed in the preparation and approval of plans.
11. Date of operation of plans.

CHAPTER IV

DEVELOPMENT OF LANDS

12. Declaration of development areas and development of land in those and other areas.
13. Application for permission.
14. User of land and buildings in contravention of plans.

CHAPTER V

ACQUISITION AND DISPOSAL OF LAND

15. Compulsory acquisition of land.
16. Compensation for compulsory acquisition of land.
17. Appeal to the district judge against decision of the collector.
18. Disputes as to apportionment of the compensation.
19. Payment of compensation or deposit of the same in court.
20. Investment of the amount of compensation deposited in court.
21. Disposal of land by the Authority.
22. **Nazul lands.**

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

CLAUSES

23. Fund of the Authority.
24. Budget of the Authority.
25. Accounts and audit.
26. Annual report.
27. Pension and provident fund.

CHAPTER VII

SUPPLEMENT AND MISCELLANEOUS PROVISIONS

28. Powers of entry.
 29. Penalties.
 30. Order of demolition of building.
 31. Power of Authority to stop building operations.
 32. Offences by companies.
 33. Fines when realised to be paid to Authority.
 34. Composition of offences.
 35. Default powers of Authority.
 36. Power of Authority to require local authority to assume responsibility for amenities in certain cases.
 37. Power of Authority to levy betterment charges.
 38. Assessment of betterment charge by Authority.
 39. Settlement of betterment charge by arbitrators.
 40. Payment of betterment charge.
 41. Control by Central Government.
 42. Returns and information.
 43. Service of notices, etc.
 44. Public notice how to be made known.
 45. Notices, etc., to fix reasonable time.
 46. Authentication of orders and documents of the Authority.
 47. Members and officers to be public servants.
 48. Jurisdiction of courts.
 49. Sanction of prosecution.
 50. Magistrate's power to impose enhanced penalties.
 51. Protection of action taken in good faith.
 52. Power to delegate.
 53. Effect of other laws.
 54. Savings.
 55. Plans to stand modified in certain cases.
 56. Power to make rules.
 57. Power to make regulations.
 58. Laying of rules and regulations before Parliament.
 59. Dissolution of the Authority.
 60. Repeal, etc. and savings.
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BILL No. 70 of 1957**THE DELHI DEVELOPMENT BILL, 1957**

(AS AMENDED BY THE JOINT COMMITTEE)

(Words *sidelined or underlined* indicate the amendments suggested by the Committee; asterisks indicate omissions)

A**BILL**

to provide for the development of Delhi according to plan and for matters ancillary thereto.

BE it enacted by Parliament in the Eighth Year of the Republic of India as follows:—

CHAPTER I**PRELIMINARY**

- 5 1. (1) This Act may be called the Delhi Development Act, 1957. Short title, extent and commencement,
- (2) It extends to the whole of the Union territory of Delhi.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,— Definitions
- 10 (a) "amenity" includes road, water supply, street lighting, drainage, sewerage, public works and such other convenience as the Central Government may, by notification in the Official Gazette, specify to be an amenity for the purposes of this Act;
- 15 (b) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;

(c) "building operations" includes rebuilding operations, structural alterations of or additions to buildings and other operations normally undertaken in connection with the construction of buildings;

(d) "development" with its grammatical variations means 5 the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment;

(e) "development area" means any area declared to be a development area under sub-section (1) of section 12, 10

(f) "engineering operations" includes the formation or laying out of means of access to a road or the laying out of means of water supply;

(g) "means of access" includes any means of access whether private or public, for vehicles or for foot passengers, and in- 15 cludes a road;

(h) "regulation" means a regulation made under this Act by the Delhi Development Authority constituted under section 3;

(i) "rule" means a rule made under this Act by the Central Government; 20

(j) "to erect" in relation to any building includes—

(i) any material alteration or enlargement of any building,

(ii) the conversion by structural alteration into a place for human habitation of any building not originally cons- 25 tructed for human habitation,

(iii) the conversion into more than one place for human habitation of a building originally constructed as one such place,

(iv) the conversion of two or more places of human 30 habitation into a greater number of such places,

(v) such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security,

(vi) the addition of any rooms, buildings, houses or 35 other structures to any building, and

(vii) the construction in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street or land;

(k) "zone" means any one of the divisions in which Delhi 40 may be divided for the purposes of development under this Act.

CHAPTER II

THE DELHI DEVELOPMENT AUTHORITY AND ITS OBJECTS

3. (1) As soon as may be after the commencement of this Act, the Central Government shall, by notification in the Official Gazette, constitute for the purposes of this Act an authority to be called the Delhi Development Authority (hereinafter referred to as the Authority). The Delhi Development Authority.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall by the said name sue and be sued.

(3) The Authority shall consist of the following members, namely:—

(a) a chairman who shall be the administrator of the Union territory of Delhi, *ex officio*;

(b) a vice-chairman to be appointed by the Central Government; * * * *

(c) a finance and accounts member to be appointed by the Central Government;

(d) an engineer member to be appointed by the Central Government;

(e) as and when the Municipal Corporation of Delhi is established, two representatives of that Corporation to be elected by the councillors and aldermen of the Corporation from among themselves;

(f) two representatives of the Advisory Committee in respect of the Union territory of Delhi constituted by the President by notification of the Government of India in the Ministry of Home Affairs, No. 19/30/56—SRI, dated the 8th November, 1956, to be elected by the members of that Committee from among themselves;

(g) two other persons to be nominated by the Central Government; and

(h) the Commissioner of the Municipal Corporation of Delhi, *ex officio*.

(4) The vice-chairman, the finance and accounts member and the engineer member shall be whole-time paid members of the Authority and shall be entitled to receive from the funds of the Authority such salaries and such allowances, if any, and governed by such con-

ditions of service as may be determined by rules made in this behalf.

(5) The members specified in clause (e), clause (f) and clause (g) of sub-section (3) may be paid from the funds of the Authority such allowances, if any, as may be fixed by the Central Government in this behalf. 5

(6) The vice-chairman, the finance and accounts member, the engineer member and the two members referred to in clause (g) of sub-section (3) shall hold office during the pleasure of the Central Government and the two representatives of the Advisory Committee of Delhi referred to in clause (f) of sub-section (3) shall hold office for so long only as they continue to be members thereof. 10

(7) Save as provided in sub-section (8) a representative of the Municipal Corporation of Delhi shall hold office for a term of four years from the date of his election to the Authority and shall be eligible for re-election: 15

Provided that such term shall come to an end as soon as he ceases to be a councillor or an alderman of the said Corporation.

(8) A representative of the Municipal Corporation of Delhi elected under clause (e) of sub-section (3) to fill a casual vacancy shall continue in office for the remainder of the term of the member in whose place he is elected. 20

(9) A member other than an *ex officio* member may resign his office by writing under his hand addressed to the Central Government but shall continue in office until his resignation is accepted by that Government. 25

(10) No act or proceedings of the Authority shall be invalid by reason of the existence of any vacancy in, or defect in the constitution of, the Authority.

Staff of the
Authority.

4. (1) The Central Government may appoint two suitable persons respectively as the secretary and the chief accounts officer of the Authority who shall exercise such powers and perform such duties as may be prescribed by regulations or delegated to them by the Authority or the chairman. 30

(2) Subject to such control and restrictions as may be prescribed by rules, the Authority may appoint such number of other officers and employees (including experts for technical work) as may be necessary for the efficient performance of its functions and may determine their designations and grades. 35

(3) The secretary, chief accounts officer and other officers and employees of the Authority shall be entitled to receive from the funds of the Authority such salaries and such allowances, if any, and shall be governed by such conditions of service as may be determined by regulations made in this behalf.

5. (1) The Authority shall, as soon as may be, constitute an advisory council for the purpose of advising the Authority on the preparation of the master plan and the zonal development plans and generally on the planning of development of Delhi and on such other matters arising out of, or in connection with, the administration of this Act as may be referred to it by the Authority.

(2) The advisory council shall consist of the following members, namely:—

(a) the chairman of the Authority, *ex officio*, who shall be the president;

(b) two persons with knowledge of town planning or architecture to be nominated by the Central Government;

(c) one representative of the Health Services of Delhi administration to be nominated by the Central Government;

(d) four representatives of the Municipal Corporation of Delhi to be elected by the councillors and aldermen from among themselves;

(e) three persons representing the Delhi Electric Supply Committee, the Delhi Transport Committee and the Delhi Water Supply and Sewage Disposal Committee of the said Corporation, of whom—

(i) one shall be elected by the members of the Delhi Electric Supply Committee from among themselves;

(ii) one shall be elected by the members of the Delhi Transport Committee from among themselves; and

(iii) one shall be elected by the members of the Delhi Water Supply and Sewage Disposal Committee from among themselves;

(f) three persons to be nominated by the Central Government of whom one shall represent the interests of commerce and industry and one, the interests of labour, in Delhi;

(g) four persons from the technical departments of the Central Government to be nominated by that Government; and

(h) three members of Parliament of whom two shall be members of the House of the People and one shall be a member of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States.

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(3) The Council shall meet as and when necessary and shall have the power to regulate its own procedure.

(4) An elected member shall hold office for a term of four years from the date of his election to the council and shall be eligible for re-election:

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Provided that such term shall come to an end as soon as the member ceases to be a member of the body from which he was elected.

Objects of
the Author-
ity.

6. The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

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Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.

CHAPTER III

25

MASTER PLAN AND ZONAL DEVELOPMENT PLANS

Civic survey
of, and
master plan
for, Delhi.

7. (1) The Authority shall, as soon as may be, carry out a civic survey of, and prepare a master plan for, Delhi.

(2) The master plan shall—

(a) define the various zones into which Delhi may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

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(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.

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Zonal deve-
lopment
plans.

8. (1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development plan for each of the zones into which Delhi may be divided.

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(2) A zonal development plan may—

5 (a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land-uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

10 (c) show every area in the zone which may, in the opinion of the Authority, be required or declared for development or re-development; and

(d) in particular, contain provisions regarding all or any of the following matters, namely:—

15 (i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes;

20 (iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

25 (iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings;

(v) the alignment of buildings on any site;

(vi) the architectural features of the elevation or frontage of any building to be erected on any site;

30 (vii) the number of residential buildings which may be erected on any plot or site;

35 (viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided;

(ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses or factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;

40 (x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained;

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings; and

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly in such zone or area. 5

Submission
of plans to
the Central
Government
for approval.

9. (1) In this section and in sections 10, 11, 12 and 14 the word "plan" means the master plan as well as the zonal development plan for a zone.

(2) Every plan shall, as soon as may be after its preparation, be submitted by the Authority to the Central Government for approval and that Government may either approve the plan without modifications or with such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan according to such directions. 15

Procedure to
be followed
in the pre-
paration and
approval of
plans.

10. (1) Before preparing any plan finally and submitting it to the Central Government for approval, the Authority shall prepare a plan in draft and publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice. 20

(2) The Authority shall also give reasonable opportunities to every local authority within whose local limits any land touched by the plan is situated, to make any representation with respect to the plan. 25

(3) After considering all objections, suggestions and representations that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the Central Government for its approval. 30

(4) Provisions may be made by rules made in this behalf with respect to the form and content of a plan and with respect to the procedure to be followed and any other matter, in connection with the preparation, submission and approval of such plan.

(5) Subject to the foregoing provisions of this section the Central Government may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan submitted to it under this section. 35

Date of
operation of
plans.

11. Immediately after a plan has been approved by the Central Government, the Authority shall publish in such manner as may be 40

prescribed by regulations a notice stating that a plan has been approved and naming a place where a copy of the plan may be inspected at all reasonable hours and upon the date of the first publication of the aforesaid notice the plan shall come into operation.

5

CHAPTER IV

DEVELOPMENT OF LANDS

12. (1) As soon as may be after the commencement of this Act the Central Government after consultation with the Authority * * * may, by notification in the Official Gazette, declare any area 10 in Delhi to be a development area for the purposes of this Act:

Declaration of development areas and development of land in those and other areas.

Provided that after the establishment of the Municipal Corporation of Delhi no such declaration shall be made except after consultation with that Corporation also.

(2) Save as otherwise provided in this Act, the Authority shall 15 not undertake or carry out any development of land in any area which is not a development area.

(3) After the commencement of this Act but before the coming into operation of any of the plans in a zone no development of land in any development area in the zone shall be undertaken or carried 20 out by any person or body (including a department of Government) unless permission for such development has been obtained in writing from the Authority.

(4) After the coming into operation of any of the plans in a zone no development of land shall be undertaken or carried out—

25 (a) in any development area in the zone—

(1) by the Authority itself except in accordance with such plans;

(2) by any person or body (including a department of Government)—

30 (i) except in accordance with such plans; and

(ii) unless permission for such development has been obtained in writing from the Authority;

(b) in any area other than a development area in the zone, 35 by any person or body (including a department of Government) except in accordance with such plans.

(5) Notwithstanding anything contained in sub-sections (3) and (4) development of any land begun by any department of Government or any local authority before the commencement of this Act may be completed by that department or local authority without 40 compliance with the requirements of those sub-sections.

Application
for per-
mission.

13. (1) Every person or body (including a department of Government) desiring to obtain the permission referred to in section 12 shall make an application in writing to the Authority in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by regulations.

(2) Every application under sub-section (1) shall be accompanied by such fee as may be prescribed by rules:

Provided that no such fee shall be necessary in the case of an application made by a department of the Government.

(3) On the receipt of an application for permission under sub-section (1), the Authority after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of section 8 or in relation to any other matter, shall, by order in writing, either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission: 10 15

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused.

(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant in the manner prescribed by regulations. 20

(5) The Authority shall keep in such form as may be prescribed by regulations a register of applications for permission under this section. 25

(6) The said register shall contain such particulars including information as to the manner in which applications for permission have been dealt with as may be prescribed by regulations and shall be available for inspection by any member of the public at all reasonable hours on payment of such fee not exceeding rupees five as may be prescribed by regulations. 30

(7) Where permission is refused under this section, the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission but the Authority may, on an application for refund being made within three months of the communication of the grounds of the refusal under sub-section (4) direct refund of such portion of the fee as to it may seem proper in the circumstances of the case. 35

User of
land and
buildings in
contravention
of plans.

14. After the coming into operation of any of the plans in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan: 40

Provided that it shall be lawful to continue to use upon such terms and conditions as may be prescribed by regulations made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan
5 comes into force.

CHAPTER V

ACQUISITION AND DISPOSAL OF LAND

15 15. (1) If any land is required by the Authority for purposes of development or any other functions of the Authority under this Act, the Authority may acquire such land by publishing in the Official Gazette a notice specifying the particular purpose for which such land is required and stating that the Authority has decided to acquire the land in pursuance of this section. Compulsory acquisition of land.

15 (2) Before publishing such notice, the Authority shall call upon the owner of the land and any other person who in the opinion of the Authority may be interested therein, to show cause why the land should not be acquired.

20 (3) After considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an opportunity of being heard, the Authority may pass such orders as it deems fit.

(4) When a notice under sub-section (1) is published in the Official Gazette, the land shall on and from the date of such publication, vest absolutely in the Authority free from all encumbrances.

25 16. (1) Where any land is acquired by the Authority under this Act, the Authority shall pay for such acquisition, compensation the amount of which shall be determined in accordance with the provisions of this section. Compensation for compulsory acquisition of land.

30 (2) Where the amount of compensation can be determined by agreement between the Authority and the person to be compensated, it shall be determined in accordance with such agreement.

35 (3) Where no such agreement can be reached, the Authority shall refer the case to the collector for determination of the amount of compensation to be paid for such acquisition as also the person or persons to whom such compensation shall be paid.

(4) Before finally determining the amount of compensation, the collector shall give an opportunity to every person to be compensated to state his case as to the amount of compensation.

(5) In determining the amount of compensation, the collector shall be guided by the following principles, namely:—

(a) no allowance shall be made on account of the acquisition being compulsory;

(b) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: 5

Provided that the collector shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the person to be compensated; 10

(c) the value of the land under clause (e) shall be determined on the assumption that permission for development under this Act would be granted only for development within the range of existing use of the land at the time of its acquisition and would not be granted for any other development; 15

(d) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it would be applied only in pursuance of statutory powers, or for which there is not a market apart from the special needs of a particular purchaser or the requirements of any department of Government or any local or public authority; 20

(e) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises, or to public health, the amount of that increase shall not be taken into account. 25

(6) For the purpose of determining the amount of compensation—

(a) the collector shall have the power to require any person to deliver to him such returns and assessments as he considers necessary; 30

(b) the collector shall also have the power to require any person known or believed to be interested in the land to deliver to him a statement containing, as far as may be practicable, the name of every other person having any interest in the land as co-owner, mortgagee, tenant or otherwise, and the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement. 35

45 of 1860.

(7) Every person required to deliver a return, assessment or statement under sub-section (6) shall be deemed to be legally bound to do so within the meaning of section 175 and section 176 of the Indian Penal Code

5 (8) The collector may hear expert witnesses if it be necessary to do so in any particular case.

(9) The collector shall be entitled to enter on and inspect any land which is the subject of proceedings before him.

10 (10) The collector shall dispose of every case referred to him under sub-section (3) for determination of compensation as expeditiously as possible and in any case within such time as may be prescribed by rules.

15 (11) The collector shall determine the amount of costs incurred in any case disposed of by him under this section, and by what persons and in what proportions they are to be paid.

17. (1) Any person aggrieved by the decision of the collector determining the amount of compensation may within sixty days from the date of such decision appeal to the court of the district judge of Delhi.

Appeal to the district judge against decision of the collector.

20 (2) The decision of the court of the district judge on such appeal, and subject only to such decision, the decision of the collector determining the amount of compensation shall be final and shall not be questioned in any court.

25 18. If any dispute arises as to the apportionment of compensation among persons claiming to be entitled thereto the Authority shall refer such dispute for the decision of the court of the district judge of Delhi and the decision of that court thereon shall be final.

Disputes as to apportionment of the compensation.

30 19. (1) Where the amount of compensation is determined by agreement, the Authority shall pay such amount to the person or persons entitled thereto.

Payment of compensation or deposit of the same in court.

(2) Where the amount of compensation is determined by the collector under the provisions of section 16, the Authority shall tender payment of the compensation determined to the persons entitled thereto according to such determination and shall pay to them unless 35 prevented by some one or more of the contingencies mentioned in the next sub-section.

(3) If the persons entitled to compensation according to the decision of the collector do not consent to receive it, or if there be no person competent to alienate the land or if there be any dispute 40 as to the title to receive the compensation, the Authority shall deposit the amount of the compensation in the court of the district judge of Delhi.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount of compensation:

Provided further that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation determined under this Act, to pay the same to the person lawfully entitled thereto.

Investment of the amount of compensation deposited in court.

20. Where any amount of compensation has been deposited in court under section 19, the court may either of its own motion or on the application made by or on behalf of any party interested or claiming to be interested in such amount, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such amount has been deposited or as near thereto as may be.

Disposal of land by the Authority.

21. (1) Subject to any directions given by the Central Government under this Act, the Authority may dispose of—

(a) any land acquired by it without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit,

to such persons, in such manner and subject to such covenants and conditions as it considers expedient for securing the development of Delhi according to plan.

(2) The powers of the Authority with respect to the disposal of land acquired by it under this Act shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on land so acquired shall, if they desire to obtain accommodation on land belonging to the Authority and are willing to comply with any requirements of the Authority as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority may think fit to impose.

(3) Nothing in this Act shall be construed as enabling the Authority to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

22. (1) The Central Government may, by notification in the Nazul lands. Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as "nazul lands") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority.

CHAPTER VI

FINANCE, ACCOUNTS AND AUDIT

23. (1) The Authority shall have and maintain its own fund to which shall be credited—

(a) all moneys received by the Authority from the Central Government by way of grants, loans, advances or otherwise;

(b) all fees and charges received by the Authority under this Act;

(c) all moneys received by the Authority from the disposal of lands, buildings and other properties, movable and immovable; and

(d) all moneys received by the Authority by way of rents and profits or in any other manner or from any other source.

(2) The fund shall be applied towards meeting the expenses incurred by the Authority in the administration of this Act and for no other purposes.

(3) The Authority may keep in current account of the State Bank of India or any other bank approved by the Central Government in this behalf such sum of money out of its fund as may be prescribed by rules and any money in excess of the said sum shall be invested in such manner as may be approved by the Central Government.

(4) The Central Government may, after due appropriation made by Parliament by law in this behalf, make such grants, advances and loans to the Authority as that Government may deem necessary for the performance of the functions of the Authority under this Act; and all grants, loans and advances made shall be on such terms and conditions as the Central Government may determine. 15

Budget of
the Authority.

24. The Authority shall prepare in such form and at such time every year as may be prescribed by rules a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure of the Authority and shall forward to the Central Government such number of copies thereof as may be prescribed by 20 rules.

Accounts and
audit.

25. (1) The Authority shall maintain proper accounts and order relevant records and prepare an annual statement of accounts including the balance-sheet in such form as the Central Government may by rules prescribe in consultation with the Comptroller and Auditor-General of India. 25

(2) The accounts of the Authority shall be subject to audit annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India. 30

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of accounts of the Authority shall have the same right, privilege and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Authority. 35

(4) The accounts of the Authority as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government 40

shall cause to be printed and distributed to the members of the Parliament

26. The Comptroller and Auditor-General of India shall submit to the Central Government a report of its activities during the year ending on the 31st day of March. The report may be prescribed by rules, and the report shall be laid before each House of Parliament to be laid before each House of Parliament.

27. (1) The Comptroller and Auditor-General of India shall submit to the Central Government a report of its whole-time paid income and expenditure for the year ending on the 31st day of March in such manner and subject to such conditions as may be prescribed by rules, such pension and provident fund as it may deem fit. Pension and provident fund.

19 of 1925. (2) Where any such report has been submitted and has been constituted, the Comptroller and Auditor-General of India shall submit the provisions of the Provident Fund Act, 1912, to the Comptroller and Auditor-General of India as if it were a Government Provident Fund.

SUPPLEMENTARY PROVISIONS

28. The Comptroller and Auditor-General of India shall have power to enter into or upon any land or building with or without the consent of the owner or workmen for the purpose of— Powers of entry.

(a) making any measurement or survey or taking level or other measurements, or

(b) examining works under construction and ascertaining the course of sewers and drains,

25 (c) digging or otherwise excavating,

(d) sinking or otherwise boring for water or other purposes of work,

(e) making surveys, or otherwise determining boundaries by placing marks and cutting, or otherwise,

30 (f) a certain area of land or building or has been developed or is being developed for zonal development purposes in section 12 or in contravention of any condition or restriction which such permission has been granted, or

35 (g) doing any other thing necessary for the efficient administration of this Act:

Provided that—

(i) no such entry shall be made or made in the hours of sunrise and sunset and without giving reasonable notice to the occupier, or, if there is no occupier, to the owner of the land or building;

(ii) sufficient opportunity shall in every instance be given to enable women (if any) to withdraw from such land or building;

(iii) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered. 5

Penalties.

29. (1) Any person who whether at his own instance or at the instance of any other person or any body (including a department of Government) undertakes or carries out development of any land in 10 contravention of the master plan or zonal development plan or without the permission referred to in section 12 or in contravention of any condition subject to which such permission has been granted, shall be punishable with fine which may extend to ten thousand rupees, and in the case of a continuing offence, with further fine 15 which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who uses any land or building in contravention of the provisions of section 14 or in contravention of any terms and 20 conditions prescribed by regulations under the proviso to that section shall be punishable with fine which may extend to five thousand rupees.

(3) Any person who obstructs the entry of a person authorised under section 28 to enter into or upon any land or building or molests 25 such person after such entry shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Order of demolition of building.

30. (1) Where the erection of any building in any development area has been commenced and completed in contravention of the 30 master plan or zonal development plan or without the permission referred to in section 12 or in contravention of any condition subject to which such permission has been granted, any officer of the Authority empowered by it in this behalf may, in addition to any prosecution that may be instituted under this Act, make an order 35 directing that such erection shall be demolished by the owner thereof within such period not exceeding two months as may be specified in the order, and on the failure of the owner to comply with the order, the officer may himself cause the erection to be demolished and the expenses of such demolition shall be recoverable from the 40 owner as arrears of land revenue:

Provided that no such order shall be made unless the owner has been given an opportunity to show cause why the order should not be made.

(2) Any person aggrieved by an order under sub-section (1) may appeal to the chairman of the Authority against that order within thirty days from the date thereof; and the chairman may after hearing the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order.

(3) The decision of the chairman on the appeal and subject only to such decision the order under sub-section (1), shall be final and shall not be questioned in any court.

31. (1) Where the erection of any building has been commenced as described in section 30 but has not been completed, the Authority may, in addition to any prosecution that may be instituted under this Act, make an order requiring the building operations in relation to such erection to be discontinued on and from the date of the service of the order.

Power of
Authority to
stop building
operations.

(2) Any person failing to comply with an order under sub-section (1) shall be punishable with fine which may extend to two hundred rupees for every day during which the non-compliance continues after the service of the order.

(3) No compensation shall be claimable by any person for any damage which he may sustain in consequence of the discontinuance of the erection of any building

32. (1) If the person committing an offence under this Act is a company, every person, who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by
companies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

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Fines when realised to be paid to Authority.

33. All fines realised in connection with prosecutions under this Act shall be paid to the Authority.

Composition offences.

34. (1) The Authority or any person authorised by it by general or special order in this behalf may either before or after the institution of the proceedings compound any offence made punishable by 10 or under this Act

(2) Where an offence has been compounded, the offender, if in custody shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded

Default powers of Authority.

35. (1) If the Authority after holding a local inquiry or upon 15 report from any of its officers or other information in its possession, is satisfied that the owner of any land in a development area has failed to provide any amenity in relation to the land which in the opinion of the Authority ought to be provided or to carry out any development of the land for which permission has been obtained 20 under this Act, it may serve upon the owner a notice requiring him to provide the amenity or carry out the development within such time as may be specified in the notice

(2) If any such amenity is not provided or any such development is not carried out within the time specified in the notice, then, the 25 Authority may itself provide the amenity or carry out the development or have it provided or carried out through such agency as it deems fit.

Provided that before taking any action under this sub-section the Authority shall offer to the owner of the 30 land to show cause against the action that should not be taken.

(3) All expenses incurred by the Authority or the agency employed by it in carrying out the development for any land in a development area shall be paid by the Central Government or by the State Government or by the local authority or by the 35 expense, as may be determined by the Authority from the surplus of the land revenue.

36. Where any area has been developed by the Authority, the Authority may require the local authority within whose local limits the area so developed is situated, to assume responsibility for the maintenance of the amenities which have been provided in the area by the Authority and for the provision of the amenities which have not been provided by the Authority but which in its opinion should be provided in the area, on terms and conditions agreed upon between the Authority and that local authority; and where such terms and conditions cannot be agreed upon, on terms and conditions settled by the Central Government in consultation with the local authority on a reference of the matter to that Government by the Authority.

Power of Authority to require local authority to assume responsibility for amenities in certain cases.

37. (1) Where as a consequence of any development scheme having been executed by the Authority in any area, the value of any property in that area, in the opinion of the Authority, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development scheme.

Power of Authority to levy betterment charges.

(2) Such betterment charge shall be an amount equal to one-third of the amount by which the value of the property on the completion of the execution of the development scheme estimated as if the property were clear of buildings exceeds the value of the property prior to such execution estimated in like manner.

38. (1) When it appears to the Authority that any particular development scheme is sufficiently advanced to enable the amount of the betterment charge to be determined, the Authority may, by an order made in this behalf, declare that for the purpose of determining the betterment charge the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to the owner of the property or any person having an interest therein that the Authority proposes to assess the amount of the betterment charge in respect of the property under section 37.

Assessment of betterment by charge Authority.

(2) The Authority shall then assess the amount of betterment charge payable by the person concerned after giving such person an opportunity to be heard and such person shall, within three months from the date of receipt of the notice in writing of such assessment from the Authority, inform the Authority by a declaration in writing that he accepts the assessment or dissents from it.

(3) When the assessment proposed by the Authority is accepted by the person concerned within the period specified in sub-section (2) such assessment shall be final.

(4) If the person concerned dissents from the assessment or fails to give the Authority the information required by sub-section (2) within the period specified therein the matter shall be determined by arbitrators in the manner provided in section 39.

Settlement
of betterment
charge by
arbitrators.

39. (1) For the determination of the matter referred to in sub-section (4) of section 38, the Central Government shall appoint three arbitrators of whom one at least shall have special knowledge of the valuation of land.

(2) The arbitrators shall follow such procedure as may be prescribed by rules made in this behalf.

(3) In the event of any difference of opinion among the arbitrators the decision of the majority shall prevail and that decision shall be the award of the arbitrators.

(4) If any arbitrator dies, resigns, or is removed under sub-section (5) or refuses, or neglects in the opinion of the Central Government, to perform his duties or becomes incapable of performing the same, then the Central Government shall forthwith appoint another fit person to take the place of such arbitrator.

(5) If the Central Government is satisfied after such inquiry as it thinks fit—

(a) that an arbitrator has misconducted himself, the Central Government may remove him from his office;

(b) that the award of the arbitrators has been improperly procured or that any arbitrator has misconducted himself in connection with such award, the Central Government may set aside the award.

(6) An award which has not been set aside by the Central Government under clause (b) of sub-section (5) shall be final and shall not be questioned in any court.

(7) The provisions of the Arbitration Act, 1940, shall not apply to arbitration under this section.

Payment of
betterment
charge.

40. (1) The betterment charge levied under this Act shall be payable in such number of instalments and each instalment shall be payable at such time and in such manner as may be fixed by regulations made in this behalf.

(2) Any arrear of betterment charge shall be recoverable as an arrear of land revenue.

41. (1) The Authority shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act. Control by
Central Gov-
ernment.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by the Authority under this Act, any dispute arises between the Authority and the Central Government the decision of the Central Government on such dispute shall be final.

42. The Authority shall furnish to the Central Government such reports, returns and other information as that Government may from time to time require. Returns and
information.

43. (1) All notices, orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served— Service of
notices, etc.

15 (a) where the person to be served is a company if the document is addressed to the secretary of the company at its registered office or at its principal office or place of business and is either—

(i) sent by registered post, or

20 (ii) delivered at the registered office or at the principal office or place of business of the company;

(b) where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name or style under which its business is carried on, and is either—

25 (i) sent by registered post, or

(ii) delivered at the said place of business;

(c) where the person to be served is a public body or a corporation or society or other body, if the document is addressed to the secretary, treasurer or other head officer of that body, corporation or society at its principal office, and is either—

(i) sent by registered post, or

(ii) delivered at that office;

35 (d) in any other case, if the document is addressed to the person to be served and—

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or

business, if within the Union territory of Delhi or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates, or

(iii) is sent by registered post to that person. 5

(2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be addressed "the owner" or "the occupier", as the case may be, of that land or building (naming that land or building) without further name or description, and shall be deemed to be duly served— 10

(a) if the document so addressed is sent or delivered in accordance with clause (d) of sub-section (1); or

(b) if the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or, where there is no person on the land or building to whom it 15 can be delivered, is affixed to some conspicuous part of the land or building.

(3) Where a document is served on a partnership in accordance with this section, the document shall be deemed to be served on each partner. 20

(4) For the purpose of enabling any document to be served on the owner of any property the secretary to the Authority may by notice in writing require the occupier (if any) of the property to state the name and address of the owner thereof.

(5) Where the person on whom a document is to be served is a 25 minor, the service upon his guardian or any adult member of his family shall be deemed to be service upon the minor.

(6) A servant is not a member of the family within the meaning of this section.

Public notice
how to be
made known.

44. Every public notice given under this Act shall be in writing 30 over the signature of the secretary to the Authority and shall be widely made known in the locality to be affected thereby by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspaper or by any two or more of these means, and by any 35 other means that the secretary may think fit.

Notices, etc.,
to fix
reasonable
time.

45. Where any notice, order or other document issued or made 40 under this Act or any rule or regulation made thereunder requires anything to be done for the doing of which no time is fixed in this Act or the rule or regulation, the notice, order or other document shall specify a reasonable time for doing the same.

46. All permissions, orders, decisions, notices and other documents of the Authority shall be authenticated by the signature of the secretary to the Authority or any other officer authorised by the Authority in this behalf.

Authentification of orders and documents of the Authority.

45 of 1860. 5 47. Every member and every officer and other employee of the Authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Members and officers to be public servants.

48. No court inferior to that of a magistrate of the first class shall try an offence punishable under this Act.

Jurisdiction of courts.

10 49. No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Authority or any officer authorised by the Authority in this behalf.

Sanction of prosecution.

5 of 1898. 15 50. Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any court of a magistrate of the first class to pass any sentence authorised by this Act in excess of its powers under the said section.

Magistrate's power to impose enhanced penalties.

51. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.

Protection of action taken in good faith.

96 of 1956. 20 52. The Authority may, by notification in the Official Gazette, direct that any power exercisable by it under this Act except the power to make regulations may also be exercised by such officer or local authority as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

Power to delegate.

25 53. (1) Nothing in this Act shall affect the operation of the Slum Areas (Improvement and Clearance) Act, 1956.

Effect of other laws.

(2) Save as aforesaid, the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

30 (3) Notwithstanding anything contained in any such other law—

35 (a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

40 (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

Savings.

54. Nothing in this Act shall apply to—

(a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance of the building;

5

(b) the carrying out by any local authority or by any department of Government of any works for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cables or other apparatus including the breaking open of any street or other land for that purpose;

10

(c) the erection of a building, not being a dwelling house if such building is required for the purposes subservient to agriculture;

(d) the erection of a place of worship or a tomb or cenotaph or of a wall enclosing a graveyard, place of worship, cenotaph or *samadhi* on land which at the commencement of this Act is occupied by or for the purpose of such worship, tomb, cenotaph, graveyard or *samadhi*;

15

(e) the excavations (including wells) made in the ordinary course of agricultural operations; and

20

(f) the construction of unmetalled road intended to give access to land solely for agricultural purposes.

Plans to stand modified in certain cases.

55. (1) Where any land situated in any area in Delhi is required by the master plan or a zonal development plan to be kept as an open space or unbuilt upon or is designated in any such plan as subject to compulsory acquisition, then, if at the expiration of ten years from the date of operation of the plan under section 11 or where such land has been so required or designated by any amendment of such plan, from the date of operation of such amendment, the land is not compulsorily acquired under the provisions of this Act or, as the case may be, of any other law relating to acquisition of immovable property, by the authority for the time being charged with the development of the area in which the land is situated, the owner of the land may serve on the authority a notice requiring his interest in the land to be so acquired.

35

(2) If the authority for the time being charged with the development of the area fails to acquire the land within a period of six months from the date of receipt of the notice, the master plan or, as the case may be, the zonal development plan shall have effect, after the expiration of the said six months as if the land were not required to be kept as an open space or unbuilt upon or were not designated as subject to compulsory acquisition.

40

56. (1) The Central Government, after consultation with the Authority, may, by notification in the Official Gazette, make rules to carry out the purposes of this Act: Power to make rules.

Provided that consultation with the Authority shall not be necessary on the first occasion of the making of rules under this section, but the Central Government shall take into consideration any suggestions which the Authority may make in relation to the amendment of such rules after they are made.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner of election of representatives of the Municipal Corporation of Delhi under clause (e) of sub-section (3) of section 3;

15 (b) the qualifications and disqualifications for being chosen as, and for being, members of the Authority or the Advisory Council;

(c) the salaries, allowances and conditions of service of the whole-time paid members of the Authority;

20 (d) the control and restrictions in relation to appointment of officers and other employees;

25 (e) the form and content of the master plan and a zonal development plan and the procedure to be followed in connection with the preparation, submission and approval of such plans and the form, and the manner of publication, of the notice relating to any such plan in draft;

(f) the local inquiries and other hearings that may be held before a plan is approved;

30 (g) the periodical amendment of the master plan and a zonal development plan, the period at the expiration of which such amendment may be taken up, the procedure to be followed in making such amendment and the date of operation of such amendment;

35 (h) the fee to be paid on an application for permission under sub-section (1) of section 13 and the factors and circumstances to be taken into consideration in determining such fee;

(i) the time within which cases referred to the collector under sub-section (3) of section 16 for determination of compensation shall be disposed of;

40 (j) the manner in which nazul lands shall be dealt with after development;

(k) the procedure for referring any matter to the Central Government under section 36 for settlement of terms and condi-

tions subject to which a local authority may be required to assume responsibility for amenities in any area;

(l) the procedure to be followed by arbitrators in the determination of betterment charge;

(m) the sum of money that may be kept in current account; 5

(n) the form of the budget of the Authority and the manner of preparing the same;

(o) the form of the balance-sheet and statement of accounts;

(p) the form of the annual report and the date on or before which it shall be submitted to the Central Government; 10

(q) the manner of constitution of the pension and provident funds for whole-time paid members and officers and other employees of the Authority and the conditions subject to which such funds may be constituted;

(r) any other matter which has to be, or may be, prescribed by rules. 15

Power to
make
regulations.

57. (1) The Authority may, with the previous approval of the Central Government, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act, and without prejudice to the generality of this power, such regulations 20 may provide for—

(a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to held, the conduct of business at such meetings and the number of members necessary to form a quorum thereat; 25

(b) the powers and duties of the secretary and chief accounts officer of the Authority;

(c) the salaries, allowances and conditions of service of the secretary, chief accounts officer and other officers and employees;

(d) the procedure for the carrying out of the functions of 30 the Authority under Chapter III;

(e) the form in which any application for permission under sub-section (1) of section 13 shall be made and the particulars to be furnished in such application;

(f) the terms and conditions subject to which user of lands 35 and buildings in contravention of plans may be continued;

(g) the manner of publication of the notice under section 15;

(h) the manner of communicating the grounds of refusal of permission for development; 40

(i) the form of the register of applications for permission and the particulars to be contained in such register;

- (j) the management of the properties of the Authority; and
- (k) the time and manner of payment of betterment charge;
- (l) any other matter which has to be, or may be, prescribed by regulations.

5 (2) Until the Authority is established under this Act, any regulation which may be made under sub-section (1) may be made by the Central Government; and any regulation so made may be altered or rescinded by the Authority in exercise of its powers under sub-section (1).

10 58. All rules and regulations made under this Act shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following. Laying of rules and regulations before Parliament.

15 59. (1) Where the Central Government is satisfied that the purposes for which the Authority was established under this Act have been substantially achieved so as to render the continued existence of the Authority in the opinion of the Central Government unnecessary, that Government may by notification in the Official Gazette Dissolution of the Authority.
20 declare that the Authority shall be dissolved with effect from such date as may be specified in the notification; and the Authority shall be deemed to be dissolved accordingly.

(2) From the said date—

25 (a) all properties, funds and dues which are vested in, or realisable by, the Authority shall vest in, or be realisable by the Central Government;

(b) all nazul lands placed at the disposal of the Authority shall revert to the Central Government;

30 (c) all liabilities which are enforceable against the Authority shall be enforceable against the Central Government; and

(d) for the purpose of carrying out any development which has not been fully carried out by the Authority and for the purpose of realising properties, funds and dues referred to in clause

35 (a), the functions of the Authority shall be discharged by the Central Government.

60. (1) As from the date of the constitution of the Authority,— Repeal, etc. and savings.

(a) the United Provinces Town Improvement Act, 1919, shall cease to have effect in the Union territory of Delhi; and

(b) the Delhi (Control of Building Operations) Act, 1955, shall stand repealed.

(2) Notwithstanding the provisions of sub-section (1)—

(a) every officer and other employee serving under the Delhi Improvement Trust or the Delhi Development (Provisional) Authority immediately before the date of the constitution of the Authority shall, on and from such date, be transferred to and become an officer or other employee of the Authority with such designations as the Authority may determine and shall hold office by the same tenure, at the same remuneration and on the same terms and conditions of service as he would have held the same if the Authority had not been constituted, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Authority:

Provided that any service rendered by any such officer or other employee before the constitution of the Authority shall be deemed to be service rendered under it:

Provided further that the Authority may employ any such officer or other employee in the discharge of such functions under this Act as it may think proper and every such officer or other employee shall discharge those functions accordingly;

(b) anything done or any action taken (including any appointment, delegation, notification, order, scheme, permission, rule, bye-law, regulation or form made, granted or issued) under any of the aforesaid Acts, shall, so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been done or taken under the provisions of this Act unless and until it is superseded by anything done or any action taken under the said provisions;

(c) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Authority;

(d) all properties movable and immovable vested in the Delhi Improvement Trust or the Delhi Development (Provisional) Authority shall vest in the Authority;

(e) all rents, fees and other sums of money due to the Delhi Development Trust or the Delhi Development (Provisional) Authority shall be deemed to be due to the Authority;

(f) all suits, prosecutions and other legal proceedings instituted or which might have been instituted by, for or against the Delhi Improvement Trust or the Delhi Improvement (Provisional) Authority may be continued or instituted by, for or against the Authority.

The following report of the Joint Committee on the Bill to consolidate and amend the law relating to the government of the Indian Navy was presented to Lok Sabha on 11th November, 1957:—

Composition of the Joint Committee

Shri S. V. Ramaswamy—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Kotha Raghuramaiah
3. Lt. Col. H. H. Maharaja Manabendra Shah of Tehri Garhwal
4. Shri Raghunath Singh
5. Shri Digvijaya Narain Singh
6. Shri Arun Chandra Guha
7. Shri Shivram Rango Rane
8. Shri Bhawanji A. Khimji
9. Shri K. P. Kuttikrishnan Nair
10. Shri Joachim Alva
11. Shri B. S. Murthy
12. Shri Dwarika Nath Tewari
13. Shri P. Thanulingam Nadar
14. Shri Harish Chandra Mathur
15. Shri T. Sanganna
16. Shri Mool Chand Jain
17. Shrimati Maimoona Sultan
18. Shri Rameshwar Sahu
19. Shri K. K. Warior
20. Shri T. C. N. Menon
21. Shri Narayan Ganesh Goray
22. Shri Aurobindo Ghosal
23. Shri Shraddhakar Supakar
24. Shri Jaipal Singh
25. Shri C. R. Basappa
26. Shri V. K. Krishna Menon

Rajya Sabha

27. Dr. R. K. Mookerji
28. Dr. W. S. Barlingay
29. Dr. Raghubir Singh
30. Shri Sonusing Dhansing Patil
31. Shrimati K. Bharathi
32. Shri T. S. Pattabiraman
33. Sardar Raghubir Singh Panjhazari
34. Shah Mohamad Umair
35. Shri Mahabir Prasad
36. Shri B. K. Mukerjee
37. Shri H. N. Kunzru
38. Shri V. Prasad Rao
39. Shri V. K. Dhage.

DRAFTSMAN

Shri G. R. Rajagopaul, *Additional Secretary and Chief
Draftsman, Ministry of Law.*

Shri G. R. Bal, *Deputy Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

Report of the Joint Committee

1. the Chairman of the Joint Committee to which the *Bill to consolidate and amend the law relating to the government of the Navy was referred, having been authorised to submit the report on their behalf, present this their report, with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 31st May, 1957. The motion for reference of the Bill to a Joint Committee of the Houses was moved by Shri V. K. Krishna Menon on the 22nd July, 1957 and was discussed in the Lok Sabha on the 22nd and 23rd July, 1957 and was adopted on the 23rd July, 1957.

3. The Rajya Sabha discussed the motion on the 13th and 14th August, 1957 and concurred in the said motion on the 14th August, 1957.

4. The message from the Rajya Sabha was read out in the Lok Sabha on the 20th August, 1957.

5. The Committee held thirteen sittings in all.

6. The first sitting of the Committee was held on the 5th September, 1957 to draw up a programme of work.

7. The Committee considered the Bill clause by clause at the sittings held from the 8th to 12th and from 14th to 18th October, and on the 5th November, 1957.

8. The Committee considered and adopted the Report on the 6th November, 1957.

9. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

10. *Clause 2.*—The Committee feel that under sub-clauses (1) (c) and (2) (a) persons on board any aircraft of the Indian Navy should also be subject to the provisions of the Bill.

The Committee further feel that no particular purpose will be served by retaining original sub-clauses (2) (b) and (c) as separate sub-clauses. The Committee feel that these sub-clauses should be merged with clauses 42 and 48 respectively.

*Published in Part II, Section 2 of the Gazette of India Extraordinary, dated the 31st May, 1957.

The other amendments are of a consequential or drafting nature.

The clause has been amended accordingly.

11. *Clause 3*.—"active service" as originally defined meant "service or duty during emergency" and to make the meaning clear the word "emergency" was defined separately. The Committee feel that the two definitions could be merged and a comprehensive definition of "active service" given. The two items have therefore been suitably recast into one item accordingly.

The Committee have given careful thought to the original definition of "Criminal Court" meaning "a court of ordinary criminal jurisdiction in any part of India other than the State of Jammu and Kashmir" and feel that no exception need be made in respect of the State of Jammu and Kashmir. As a matter of drafting the definitions of "Civil Offence" and "Criminal Court" have been combined.

The other amendments are of a clarificatory or drafting nature.

12. *Clause 4* [*Original clause 24(1)*].—This clause reproduces sub-clause (1) of original clause 24 with consequential changes. It is being moved to Chapter I as restrictions on fundamental rights have a bearing not only on clause 24 but also on other clauses.

13. *Clause 5* (*Original clause 4*).—The Committee feel that the power of the Central Government to raise and maintain naval forces under the provision of this clause should come under a separate chapter. This has accordingly been done under Chapter II entitled "The Naval forces". Original clauses 5 and 6 have been removed to their appropriate places in the chapter on "Repeals and Savings."

14. *Clause 6* (*Original clause 7*).—The changes in the clause are clarificatory in nature.

15. *Clause 8* (*Original clause 9*).—The clause has been recast to bring it in line with the corresponding provision in the U.K. Act.

16. *Clause 10* (*Original clause 11*).—Original Sub-clause (4) has been reproduced as clause 187(3) under a new chapter entitled "Repeals and Savings".

17. *Clause 11* (*Original clause 12*).—The Committee feel that the period of fifteen years laid down in sub-clause (2) should not be applicable to enrolment in the Indian Naval Reserve Forces. The sub-clause has been amended accordingly.

Original Sub-clauses (3) and (4) have been combined and recast to make the intention clear.

18. *Clause 12 (Original clause 13).*—The change is of a drafting nature.

19. *Clause 14 (Original clauses 16, 17 and 18).*—The Committee consider that the option given to officers to resign subject to its acceptance should also be given to seamen. The Committee further feel that the three clauses could preferably be combined into one. The clauses have therefore been suitably amended and drafted into one clause.

20. *Clause 15 (Original clauses 19 and 20).*—The Committee feel that the two clauses could preferably be combined into one. The clauses have therefore been suitably amended and drafted into one clause.

21. *Clause 17 (Original clause 22).*—The amendment to the clause is merely consequential.

22. *Clause 19 (Original clause 24).*—Original clause 24(1) has now been transferred to Chapter entitled "Preliminary" as clause 4 and consequential changes have been made in the clause.

The other amendment is merely clarificatory.

23. *Clause 27 (Original clause 32).*—Original sub-clause (1) has been recast to make the intention clear.

The Committee feel that as original sub-clause (2) lays down the limits of total deductions during any one month, it should legitimately find a place after the clauses permitting such deduction. It has therefore been amended and drafted as a separate clause i.e. Clause 32.

24. *Clauses 28 and 29 (Original clauses 33 and 34).*—The Committee have given careful thought to these clauses providing for deductions from pay and allowances of officers and seamen respectively and have felt that as far as possible disparity between an officer and seaman should be avoided.

In order, therefore, to put them on par, the Committee have inserted a new sub-clause (3) to clause 28 similar to clause 29(3) providing for the deduction from pay and allowances for the days the officer is in hospital on account of sickness certified to have been caused by an act amounting to a punishable offence.

The Committee have similarly amended clause 29(1) to bring it in line with clause 28(1) with a view to providing for the acceptance

of a satisfactory explanation for absence without leave from seamen as well.

The other amendments are of drafting nature.

The clauses have been amended accordingly.

25. *Clauses 34, 35 & 36 (Original clauses 38, 39 and 40).*—The amendments made in these clauses are consequential or clarificatory in nature.

26. *Clause 38 (Original clause 42).*—The clause has been recast to include original sub-clause (2) (b) of clause 2.

27. *Clause 39 (Original clause 43).*—The Committee feel that the prisoners of war voluntarily serving or aiding the enemy should also be made punishable with death etc. The clause has therefore been amended accordingly.

28. *Clause 41 (Original clause 45).*—The amendment made in the clause is of a drafting nature.

29. *Clause 44 (Original clause 48).*—The clause has been recast to include original sub-clause (2) (c) of clause 2.

30. *Clause 45 (Original clause 49).*—The clause has been recast to make the intention clear.

31. *New Clause 46.*—The Committee feel that cases of ill-treatment of subordinates should be made punishable. This new clause has therefore been inserted accordingly.

32. *Clause 47 (Original clause 50).*—The Committee consider that the maximum punishment of 14 years provided for disobedience and insubordination should be reduced to ten years.

The other amendment is clarificatory.

33. *Clause 51 (Original clause 54).*—The amendment made in the clause is of a drafting nature.

34. *Clause 52 (Original clause 55).*—The Committee feel that there should be no disparity between an officer and a seaman so far as punishment for drunkenness is concerned. The clause has therefore been suitably amended.

35. *Clauses 56, 58, 62, 63 & 73 (Original clauses 59, 61, 65, 66 & 76).*—The amendments made in these clauses are of a clarificatory or drafting nature.

36. *Clause 81 (Original clause 84).*—The amendments rearrange the categories of punishments according to their scales.

37. *Clause 82 (Old clause 85).*—New sub-clause (18) has been added to make the intention clear.

38. *Clause 89 (Original clause 95).*—The amendments made in the clause are of a drafting nature.

39. *Clauses 90, 91 and 92 (Original clauses 92, 93 and 94).*—The Committee feel that these three clauses regarding joinder of charges and accused persons etc. should come under a separate chapter. Accordingly, a new Chapter XI entitled "Charge" has been inserted.

The amendment made in clause 91 is merely of a drafting nature.

40. *Clauses 94, 95, 96 & 97 (Original clauses 97, 98, 99 and 100).*—The amendments made in these clauses are of a clarificatory or drafting nature.

41. *Clause 121 (Original clauses 124 and 125).*—The Committee feel that no useful purpose is served by retaining original clause 125 as a separate clause.

Accordingly, it has been added as sub-clause (3) to clause 121.

42. *Clauses 122, 123, 143 and 152 (Original clauses 126, 127, 146 and 158).*—The amendments made in these clauses are of a clarificatory or drafting nature.

43. *Clause 156 (Original clause 162).*—The Committee feel that the word "lunatic" qualifying the word "asylum" is not necessary. It has accordingly been omitted.

44. *Clause 159 (Original clause 165).*—The Committee feel that the power to make regulations in respect of naval prisons and detention quarters conferred upon the Central Government under the clause must also specifically provide for the making of regulations regarding the food, bedding and clothing of prisoners or persons undergoing detention. Necessary provision has accordingly been made.

The other amendments are of a clarificatory or drafting nature.

45. *Clause 160 (Original Clause 150).*—The Committee feel that an opportunity should be given to a person aggrieved by a finding or sentence of court-martial to be heard if he applies to the Judge Advocate General of the Navy for a review of the proceedings.

The Committee further feel that the clause should also apply to the proceedings of disciplinary courts.

The clause has been amended accordingly.

46. *Clause 162 [Original clause 166(4)]*.—The Committee feel that the provision contained in sub-clause (4) of original clause 166 is an important provision and should therefore form a separate clause by itself.

The clause has been inserted accordingly.

47. *Clause 165 (Original clause 168)*.—The Committee feel that punishment for offences in relation to court-martial and disciplinary courts by persons not subject to naval law should be imprisonment or fine or both according to the severity of the offence committed. There may be cases where only fine will meet the ends of justice, for which alone there was no provision in the clause.

The clause has, therefore, been amended accordingly.

48. *Clause 168 (Original clause 172)*.—The Committee have considered the nomenclature “deputies and assistants to the Judge Advocate General of the Navy” and feel that instead of being called deputies and assistants to the Judge Advocate General, they should be called Judge Advocates. The Deputy Judge Advocate General of the Navy may be appointed by the Central Government from any of the Judge Advocates, provided he has the requisite qualifications.

The Committee further feel that whereas qualifications for appointment of the Judge Advocate General are laid down, no such provision is made to regulate the appointments of the Judge Advocates and the Deputy Judge Advocate General. New sub-clauses have accordingly been added.

The other amendments made in the clause are clarificatory in nature.

The clause has, therefore, been recast and amended accordingly.

49. *Clause 169 (Original clause 173)*.—The Committee feel that the functions of the Judge Advocate General of the Navy should be more precisely defined as relating to legal and judicial matters pertaining to the navy in regard to which his advice may be sought or given.

The Committee consider original sub-clause (2) as unnecessary.

The clause has therefore been amended accordingly.

50. *Clause 170 (Original clause 152)*.—This clause which is a reproduction of original clause 152 has now been inserted in its appropriate place.

51. *Clause 184 (Original clause 188).*—The Committee feel that the power to make regulations must also specifically provide for the making of regulations regarding the maintenance of the wives and children of prisoners of war or missing persons. Provision has accordingly been made.

The other amendment is merely clarificatory.

52. *Clause 186 (Original clause 189 and the Schedule).*—The clause as now redrafted does away with the Schedule.

53. *Clause 187 [Original clauses 5, 6 (2), 11 (4), 174 and 14].*—This clause brings together those provisions of the Bill which are in the nature of saving provisions.

54. The Joint Committee recommend that the Bill as amended be passed.

NEW DELHI;
The 6th November, 1957.

S. V. RAMASWAMY,
Chairman,
Joint Committee.

NOTES

I

The Oath of affirmation in the amended Navy Bill, 1957, is provided in clause 13. Mode of affirmation of oath in the Army and Air Force is provided in their respective acts by section 17, the substance of oath, however, is more or less the same in all the three services.

While considering the Navy Bill, a question was raised in one of the select committee meetings on the Bill, as to whether the form of 'Oath', as provided in the bill, was adequate or not. It was felt that as it binds service personnel to the 'Constitution' of India only and the words 'Republic of India' or 'India' do not find place in the subject matter of 'Oath', it might not meet the purpose, for which it was intended, adequately. The consensus of opinion that prevailed amongst the committee members however was that any material change in the form of 'Oath' for Naval personnel only would not be in order as it would then substantially differ from the form of oath provided for the two sister services, Army and the Air Force. It was also pointed out that in the case of Civil Services, too, which form the hard core of administration in the country, the form of oath commands allegiance to the "Constitution" of the country only and as such, it (i.e. the form of Oath) should be considered adequate as, at present, worded.

On careful reflection, I, however, feel that largely perhaps due to the convention of prevalent practice alone, the pith point has not been properly appreciated. I consider that taking of an oath is something very solemn which reminds the person, taking the oath, the responsibility that rests on his shoulders; and that a breach of it would be punishable with death because a breach of it (oath) is tantamount to nothing short of the highest type of treason. The American Constitution defined treason as an 'act directed against the United States'. Further the ordinary and legal connotation of the word 'traitor' is "one who betrays the cause of the country". The ultimate fidelity of a country's services, I therefore feel, should be both to the country and its constitution and not to the constitution alone, as it is the country which is sovereign and comprises in its ambit the constitution, the Government and the people.

It might be argued that in India it is the 'people' who are sovereign and not the country. It might be said further that it is only in a fascist or Communist State that people exist for the State and

not the State for the people. And as such in a welfare state the fidelity may be to the constitution alone as the constitution invariably pertains to a country and therefore, fidelity to the constitution implies fidelity to the country. As a counter argument to this I have only to cite two references of practices obtainable in U.K. and U.S.A. In U.K. 'oath' commands allegiance to the Queen, as a symbolic head of the State and so is the case with the United States. It is, therefore, only right that in India too affirmation of oath should both be to the Constitution and the country.

It can be argued that as "treachery" has a fixed connotation and that in it, loyalty to the country is always implied necessity for its inclusion in the oath does not arise. Only penal clauses like clauses 39, 40, 42, 43, 44 are therefore enough.

Even then, the deletion of allusion to the country in the oath is not advisable, when it categorically exacts allegiance to the Constitution of India, faithful service in the naval service; and observation and obedience to all commands of the President and his superior officer. It may also be argued that wherever offences against the country are involved, the penal clauses of the Navy Bill do contain the word "traitrously" and the "State" and as such the express mention of the words "India" or the words of India is not necessary in the form of the oath. Even if the failings of this argument are ignored and is allowed to prevail, one fails to appreciate as to why the gravest kind of disloyalty i.e. treason should be left without being defined directly in clause 3 (Definition) of the Navy Bill or in the Constitution as in U.S.A. or even by implication by having it in clause 13 of the Navy Bill.

No one would question that in the ultimate analysis, people who comprise the State have to defend the State. They have to safeguard the Institution which according to a famous political thinker "Comes into being for the sake of this life and continues to exist to better their life". The ultimate loyalty of the armed forces in India should lie ultimately in their country that is permanent and not only to the constitution alone which is changeable from time to time. A constitution is brought into being for the good governance of the State and armed forces are one of the coercive elements of a State. The fidelity of the armed forces is to the State and their duty to defend it are the two fundamental duties of the armed services. Hence their declaration of oath to India, in addition to the constitution is not only essential but imperative. Furthermore affirmation of oath to the State or to the constitution alone is fraught with serious potentialities of either a *coup d'etat* in the former case or situations like the one which obtained in France during the Second World War where the French forces had to regain control of their

lost country even though a puppet Government in accordance with the Constitution of France was in existence.

Last of all, if emotions are not lightly treated, the moral force, the chord that commands sacrifice, and that goads a soldier even to lay his life in the battle fields is his undying love for his country and not for the constitution of his country which for all practical purposes is a secondary thing for him.

To sum up, I therefore suggest, that the form of oath for the three services should be amended to include both "allegiance to the Constitution of India and loyalty to India".

Note on Appeal

I agree to the Note on Appeals prepared by Dr. Barlingay on the Navy Bill, 1957.

MANABENDRA SHAH.

NEW DELHI;
The 7th November, 1957.

II

I agree generally with the provisions of the Navy Bill as amended by the Joint Select Committee. This piece of legislation will be found to be well in advance of the Army and Air Force Acts and contains distinctive provisions which might well be adopted by the other two Services. There are, however, a few matters on which I should like to put forward my suggestions.

2. I think we might usefully consider whether the present structure of the general administration of the Naval Service might be suitably altered. The present structure suffers from a large number of defects. While the Defence Minister is responsible to the Parliament for the defence of India and for the general administration of the Armed Forces, the Service Headquarters are treated somewhat as an organisation subordinate to the Ministry of Defence rather than as an integral part of the portfolio of the Defence Minister. This method of administration which might perhaps be suitable for Civil Departments of the Government appears to be unsuitable for the defence needs of the country. The administration of the Armed Forces is not a matter which can be left entirely to the civil servants, as it happens to-day. The head of the Service, although termed as the Chief of the Naval Staff, does not in point of fact exercise any

powers of the Government. All matters of administration have apparently to be submitted to the scrutiny of the civil servant who thereafter decides what is good for the Navy. No doubt there is a direct approach which the Chief of the Naval Staff has to the Minister of Defence, but this in itself is not satisfactory. Would it not be better to have the administration based somewhat on the same lines as in the U.K. where there is a Board of Admiralty, an Army Council and an Air Council? The Members of these Councils work as one unit not as separate organisations or authorities with competing powers. This results, first of all, in a direct administration of the Services by the Government. It also results in the Government keeping its hands on the pulse of the Services. In the present organization in India, however, the general rules of administration are framed by the Ministry of Defence. It is for the Chief of the Naval Staff to take steps to implement these rules. If the rules are bad, he can do no more than protest. The administration is completely removed from the men who form the Service and it is not a little strain on the imagination of the civil servants to be able to appreciate Defence problems. Such position may perhaps result in the Chief of the Naval Staff having the responsibility without the necessary powers and on the other hand a situation may arise whereby the civil servants in the Ministry exercise the powers without being immediately responsible.

3. The sort of Council that I envisage is a Council consisting of the Defence Minister, a Deputy Defence Minister, the Chief of the Naval Staff, the Secretary of the Ministry of Defence, the Financial Adviser and perhaps one or two more Service Officers with distinctive functions as for instance the Chief of Personnel and the Chief of Material. The Chairman, that is to say, the Defence Minister will naturally have overriding powers. The Headquarters should be organized under the Council and should consist of both civil servants and Service Officers. In effect, this would combine the Ministry of Defence with the Naval Headquarters. The result would be that this Council and its office would work as one single unit. Apart from other things, this would result in a more efficient and economic administration. It will obviate the necessity of the duplication of work which is inherent in the present system. For instance, in the matter of pay, the Headquarters have, I understand, to maintain a branch which consists of experts on naval pay. There is a corresponding section in the Ministry of Defence which also deals with this subject and sometimes it would but be inevitable, and I say so without meaning to cast any aspersions on any individual, that the section in the Ministry might really act as a mere post office between the corresponding section of the Headquarters and the Ministry of Finance.

4. The other important result of this will be that in matters of discipline, the Chief of the Naval Staff will not act in his individual capacity, but as a member of the Council. The present system is, to my mind, completely undemocratic and wrong whereby one individual like the Chief of the Naval Staff is granted such vast powers with regard to the remission of sentences. I have examined the laws in the U.K. and I find that no one individual officer exercises such vast powers as are given in India to the three Service Chiefs. Now, I am not against the officers with being entrusted with responsibility, but I would want these powers to be exercised by them not as individuals, but as members of a Council with the Defence Minister as its Chairman.

5. The other point which needs further consideration is the position and status of the Judge Advocate General. The Lewis Committee report in U.K. and the Oliver Committee which preceded it, both recommended that the Judge Advocate General should be responsible to some Minister other than the Secretary of State for War or Air. This suggestion was accepted by the Government of the U.K. and the Judge Advocate General in the U.K. is no longer responsible to the Ministers for War or Air or the Navy but to the Lord Chancellor. My proposal was a more modest one—it was that the Judge Advocate General should be responsible directly to the Defence Minister. This position indeed obtains in Canada. I made my recommendation not from any purely doctrinaire point of view, but from the experience of the ages and from the experience of the democracies of the world. I consider that unless the Judge Advocate General is ensured independence and is given a suitable status (in U.K. it was recommended that he should have the same status as a High Court judge and this suggestion was accepted), the purpose of making such an appointment will not be achieved. I withdraw my proposal but I feel that Government should as a matter of administrative arrangement ensure complete independence of the Judge Advocate General.

6. The third matter which requires attention is the question of setting up an appellate tribunal. I feel that in the first place Government should study the problem perhaps by setting up a committee and secondly that an appellate tribunal cannot be set up only for the Navy but for all the three services. We in India have borrowed the structure of our Armed Forces and the mode of their administration from the British, but having done so we appear to have crystallised the administration as it was at the time that the British left. In a system of law which was applicable to both Indian and British forces, it was found as a matter of experience that there ought to be a Special Courts-Martial Appeals Court and this Court

has been set up in U.K. Provision has also, I believe, been made by Canada and Australia and indeed such provisions also exist in the forces of the United States. I consider that Government should give this matter further consideration at a later stage.

7. A matter on which I think we might have been less conservative was in regard to the name "petty officer". I think that this name ought to have been changed to something which sounds, at least to the layman, more dignified.

8. Another matter which I think requires further consideration is the provision which bars women from service in the Navy. While I feel that exclusion of women from the Navy is defensible on the ground of policy, I do not see much justification for a legal provision for such exclusion. After all there are several things which can be done by pure executive action.

9. Lastly with regard to the form of oath I feel inclined to agree with the observations made by H. H. The Maharaja of Tehri Garhwal in his note.

NEW DELHI;

W. S. BARLINGAY.

The 8th November, 1957.

MINUTES OF DISSENT

I

I feel that the Navy Bill, 1957 as it emerges out of the Joint Select Committee is not sufficiently modern for the following reasons among others.

Court martial Appeal.—The original Bill did not contain any provision for appeals from sentences of courts-martial. The Committee considered the proposal of incorporating provision for appeals from sentences of courts-martial but unfortunately rejected the proposal by a majority of votes. The provisions of articles 33, 136 and 227 of our Constitution seem to have largely influenced the Committee, and (apparently the government also) in coming to the conclusion that the High Court and Supreme Court should have nothing to do with reconsidering the decision of a court martial. But whereas it may be conceded that the High Court and the Supreme Court should not exercise their ordinary or special jurisdiction to interfere with the finding of a court martial, the proposal of having an appellate authority on the decision of a court martial, stands, to my mind, on altogether a different footing.

Our Constitution came into force in January, 1950. The United Kingdom, the United States of America, Australia and Canada have, very recently, i.e. after 1950, introduced special courts of appeal against decisions of court martial—apparently for very good reasons. When the Joint Select Committee came to a decision on the point of desirability of an appellate court, apparently they had not before them the statutes providing for appellate courts from decisions of courts-martial in U.K., U.S.A., Australia and Canada.

If we analyse the court martial procedure in the Navy Bill, we find that it resembles closely the jury trial provided for in the Code of Criminal Procedure. The court consists of a number of naval officers, who can be compared to the jury. The naval officers, are assisted by the Judge Advocate in legal matters but the sentence is theirs. More often than not, the sentence is serious, sometimes capital. Unintentional misdirection by the Judge Advocate or error of law cannot be ruled out. A capital sentence may be passed by a narrow majority and even when the Judge Advocate disagrees. There is no provision in the Navy Bill corresponding or analogous to Section 307 of the Code of Criminal Procedure. Judicial review by the Judge-Advocate-General of the Navy, and mercy petition

to the President are not full and adequate guarantee of justice in such cases.

I feel we may profitably amend the Army Act, 1950, the Air Force Act, 1950 and the present Bill to introduce a sort of joint court of appeal against sentences of all military courts-martial. There can be two main objections to have court of appeal. The first one is that a court of appeal will delay finality of decision. But so may a judicial review by a very busy Judge-Advocate-General. If we have provided in the Representation of Peoples Act, 1956 that the High Court should try to dispose of an election appeal within three months, in spite of other work with which the High Court is burdened, there is nothing to prevent the Parliament from providing for as speedy disposal of court martial appeals by an authority which has no other work except to hear and dispose of court martial appeals. The second possible objection against an appellate authority is the fear of violation of secrecy. But it will be seen from clause 100 of the Bill, that ordinarily the court martial trials are open to public, and in special cases of public interest, public may be excluded from the court. Similarly provisions could be easily made to safeguard national interest in courts of appeal also.

At least, all the capital sentences by courts-martial should be appealable.

Clause 34.—This clause, as it is worded, is not sufficiently modern. An officer has to give the signal of battle and take the offensive long before the ship of an enemy is on sight. In these days of inter-continental ballistic missile, and upto-date scientific signals to sense an enemy ship, it would be fatal, if not suicidal, to wait till the ship of an enemy is on sight. (See clause 34, line 3). The duty of an officer to engage the ship of an enemy and to give signal of battle must usually begin before the enemy ship is in sight. As the clause stands there is a lacuna, which gives an offending officer a defence which he does not deserve.

There are other points like vagueness in the use of the words drunkenness, cruelty. I propose to move some amendments on those points.

NEW DELHI;
The 6th November, 1957.

SHRADDHAKAR SUPAKAR.

II

The idea of this sort of legislation is certainly welcome but the endeavour of the legislators should be to make all legislations perfect and consistent with the fundamentals of the Constitution so

far as practicable. Though I fully appreciate the limitations of such enactments, still it can not be denied that many unwelcome features inconsistent with the modern sense of equity and justice exist within the four corners of the Navy Bill.

Some of the provisions have been retained in the Bill without any logical ground whatsoever except on the precedence of their existence in the Army Act. To ascribe such weak reasons for the retention of illogical or unnecessary clauses is rather unreasonable. If we do not try to improve our legislations through the experience of defective working of our previous legislations and also do not try to gain by the experience of other countries, our laws are bound to be mere stereotyped repetitions of old laws of other spheres. So we should adopt an accommodating attitude for improving the standard of our legislation. The Navy Bill suffers from this defect.

Secondly, the drafting of the Bill has not been very happy which, of course, has been tried to be improved in the Select Committee.

Thirdly, the difference of two provinces i.e. the province of the Act and that of its Regulations has not been always observed. The fundamental provisions are generally set within the Act and the procedure of the implementation of the provisions of the Act are provided in the Rules or Regulations.

But in the Navy Bill they overlap each other. In some chapters some of the procedural matters which should have been provided in the regulations, have been incorporated in the provisions of the main Act.

Lastly, the principle of punishment. Though I accept that there is some scope of difference in the method of punishment of the offenders between the Navy Bill and other ordinary laws, still it must be said that the quantum of punishment in some cases has been irrelevant, harsh and quite inconsistent with the magnitude of offences and again in fixing up the quantum of punishment the general principle of the Indian Penal Code has not been observed, e.g., the offence under clause 65 of the Navy Bill. Under this clause any person who will move even on the ground of "unwholesomeness of victuals or upon any other just ground", will be liable to be hauled up before the Court Martial and the highest punishment of fourteen years has been reserved for him.

There are also some uncommon provisions quite repugnant to the spirit of the ordinary law of the land, e.g., clauses 37(4) and 88(2). In ordinary law the plaintiff or the complainant is not required to deposit the conveyance expenses of the defendant or the accused for his appearance along with the process except the nominal process fee for service. But in this clause even a destitute

deserted wife shall have to deposit huge conveyance expenses if she wants to file even a suit for maintenance. The real motive behind this provision is to desist the deserted wife from filing suits for maintenance even on the pain of huge costs to be incurred. In clause 88(2) 'forty-eight' hours have been provided for production of an offender before the commanding officer "excluding the time necessary for the journey from the place of arrest to such commanding officer." In ordinary law the period for production of an offender before a Magistrate is "twenty four" hours under the Criminal Procedure Code. In this clause while the journey period is excluded, there is no earthly reason why it should be "48 hours" instead of "24 hours."

The Navy Bill suffers from another defect i.e. vagueness. The fundamental principle of law is that the definition or description of offences should be precise and should be expressed in clear terms in order to avoid ambiguity. But this principle has not been observed in many places. In clause 46 "embarrassing lawful naval authority" or "undermining naval discipline" etc. have been considered as offences falling under the category of 'mutiny' for which the highest punishment is death sentence. Any person can be roped in, if intended, in the trap of the above phrases. So the clauses which do not express the concrete nature of offences should be omitted.

Lastly, the absence of any right of appeal to the Supreme Court or to any other highest judiciary body formed for this purpose against the Court Martials, specially in those cases where the death sentence will be awarded, is a great lacuna in the Bill. It is just and proper to provide such right to the offenders who will be the victims of the highest punishment. This is an inherent fundamental right most appropriate to our Constitution. The provision of review is there no doubt. But the reviewing authority is the Judge Advocate himself who has already advised the Court Martial in coming to the conclusion and also in awarding punishment. Moreover the scope of review is also very limited and the reviewing authority is not a judiciary but an executive body. Next, the provision of the confirmation of a death sentence by the Central Government, though provided, can never be a sufficient check nor it can replace an appeal. There is rarely any scope of judicial discrimination in the bureaucratic red-tapism of Governmental machinery which is our every day experience. Even in countries like United Kingdom, Canada, Australia, United States of America, the necessity of appeal was felt. In U.K. the Court-Martial (Appeals) Act of 1951 was enacted. In Australia the provision for appeal against the court-martials has been made in the Courts-Martial Appeals Act of 1955. In Canada the personnel of 3 Wings of

Defence Forces have been given the right to appeal against the court-martial by virtue of the National Defence Act, 1950 as amended by the Canadian Forces Act, 1955. In U.S.A. though there is no provision for appeal in its technical term, still there is the provision for a Board of Review consisting of civilian members and there is also the Court of Military Appeals consisting of 3 civilian judges which has been created by Congress in 1950 for considering the cases passed upon by the Board of Review.

This right of appeal has been conceded to in the above countries as they like to attach more importance to the human life than to any codified laws of conduct and discipline. A person before going to the gallows must be given right to obtain justice from a judicial authority which should be considered as one's fundamental right. I do not understand why we should not reap profit from the experience of U.K. and other countries and why we should not adopt this statutory provision from their laws when we are so keen to adopt so many unimportant provisions from their other Acts. So in my opinion there should be the provision of appeal to the Supreme Court or to a special court composed of the Supreme Court Judges for trying those naval offences where the highest punishment or the death sentence will be awarded.

NEW DELHI;

AUROBINDO GHOSAL.

The 8th November, 1957.

III

It is with a feeling of deep regret that we record our disagreement with our colleagues of the Joint Select Committee of the Navy Bill. Though we tried our best to accommodate our points of view with those of our colleagues, to the maximum possible extent we had to decide otherwise because it is our firm conviction that the provisions of the Bill will have ultimately very vital and far-reaching consequences on the morale, discipline and strength of our armed forces. Therefore we feel it our bounden duty discharging as we are, the trust entrusted to us by both Houses of Parliament, and with utmost respect to the view-points of our colleagues on the committee to record the following for consideration of both Houses of Parliament.

It is obvious that the piece of legislation under discussion is not an ordinary piece of legislation and the functions of both Houses of Parliament are not also in this respect purely legislative in character. We have a Constitution written and which explicitly confers

upon the citizens certain fundamental rights which are the only justiciable rights of the citizens and which admittedly are the most sacred and inviolable. As a matter of fact the fundamental rights of ours, restricted as they are to enable to maintain security of the State and even public order have absorbed themselves into the very basic conceptions of democracy in our country. The learned framers of the Constitution, keeping rightly in their minds the infant republic that they were creating, decided to entrust with the Supreme Sovereign body of that Republic the duty of conferring upon our armed forces certain rights which they themselves have conferred upon the people of India. It is obvious that the Constituent Assembly decided to delegate its Constitution making functions, as far as the members of the armed forces are concerned, to this Parliament because they thought it wiser that the experience of the working of the Republic shall contribute to a considerable extent the formulation of the nature and extent of the fundamental rights to be given to the members of the armed forces. Keeping this aspect in mind we venture to submit that the majority of our colleagues on the Joint Committee have failed painfully to do justice not only to the members of the armed forces but also to the ideals and aspirations of our young democratic Republic as professed in the preamble to the Constitution of India.

The Bill as it was introduced in the Lok Sabha was drafted on the basis of the United Kingdom Navy Act. The Defence Minister when commending the Bill for the consideration of the Lok Sabha had also made it clear that the Bill is a verbatim reproduction of the provisions of Naval law in England. Throughout the deliberations in the Joint Committee the Government stuck to a dogmatic, arbitrary and irreconcilable approach to changes suggested and thereby remaining faithful to all the causes as they were sometimes on the sole ground that the provisions are literal reproductions of the U.K. law. Because of this approach the decisions of the majority of the Committee do not reflect the experience of the Indian Navy and also that of other Navies of the World. It should quite pertinently be noted that even in copying the U.K. Law, very salutary provisions of the law of that country itself have been ignored at many places with the result that we have strained the chaff for the use of throwing out the grain to the winds. The Bill as reported by the majority of the Joint Committee is in effect a poor apology of the provisions of the Naval Law in England. There are a number of valuable documents containing recommendations of a series of Parliamentary Committees and Commissions in the United Kingdom constituted with very eminent personalities who taking into consideration the experience of the U.K. Navy and bearing in mind the question of discipline of the armed services but at

the same time without sacrificing the essential and laudatory principles of English conception of justice, have formulated their views. To mention specifically, Report of the Select Committee on the Naval Discipline Act, First Report of the Pilcher Committee (Command Paper 1894), Second Report of the Pilcher Committee which deals with the administration of justice under the above act (Command Paper 8119) and Report of the Lewis Committee (Command Paper 7608) are a few.

It is unfortunate to that the majority of our colleagues who agreed on this Report of the Joint Committee had not benefited from materials and the views contained in the above said documents. This is all the more reason for our disagreement with our colleagues on the Joint Committee. We are prepared to admit that the experiences of the United Kingdom in naval matters are in a way more abundant in material than that of ours. The role of the Navy of the Indian Republic is nothing but the defence of the sovereignty of our people and the security of our country. For a navy charged with this role and whose only aspiration is peace and liberty to other peoples, the experience and customs of the British Navy should only be utilised with abundant caution. It is true that our experience as a free nation is limited and consequently our progress in the direction of formulating a code and conduct of behaviour for different parts of our national life will naturally be slow and arduous, but we will have to work hard with the utmost caution in formulating these laws. If we want to make our democratic experiment with its professed socialistic leanings a success in the sense that it serves the best interests of all sections of our people and achieve an essentially stable nation, it follows that though British precedents in technique and organisation are a very valuable guide to us in as much as they crystallise human experience over centuries, it will neither be salutary nor desirable for us to copy each and every one of them for the simple reason that our thought and temperament, our culture and tradition, our social structure and history and all the more our very different conception of democracy and liberty are basically and intrinsically different from that of the British. This Bill should have been drafted in this light and this Parliament must have to consider a law suited to our conditions and if those laws are found not suitable later on, on the twilight of this formative period of our democracy, proper changes could be introduced. We express our dissent in this basic approach and when the Bill comes before the Houses of Parliament the provisions which reflect this outlook should radically be changed.

We also wish to record our disapproval with the majority of our colleagues on the Joint Committee in their decision of not

recording evidence from naval personnel, so that we may be benefited in our deliberations and decisions by the experience of our own men in the Indian Navy. It was quite unfortunate that the majority of our colleagues decided not to take any evidence at all. This decision of theirs have not only deprived the Joint Committee of certain facts relating to the large experience which are a '*Sine qua non*' for a sound and enduring piece of legislation and it has deprived both houses of Parliament of those essentials also. The U. K. Act might reflect the conditions of the British Navy. But our law cannot and should not be a law reflecting and incorporating the necessities of the British Navy but it ought to have been a law of the Indian Parliament for the benefit of both our nation and our own naval personnel. This could not be achieved by the Joint Committee because of the majority decision not to record any evidence.

Even though we disagree with the majority view on the various clauses as reported by the Committee, in this dissenting note we confine ourselves by making our observations on the general principles involved in the various clauses of the Bill.

Firstly, we come to the extent of the Fundamental Rights which we may confer upon the members of the armed forces. At the outset we may make it perfectly clear that we are as much anxious as any member of the Government about discipline and it may not be possible to give the members of our armed services as much liberty as are enjoyed by a citizen of India under the Constitution.

But at the same time we feel the Fundamental Rights as guaranteed by our Constitution should be the rule as far as possible and the necessity and the extent of curtailing those rights should be treated as exceptions. It will be highly dangerous for us to conceive that a citizen of India when he enters the armed services ceases to be a citizen. There is no doubt and it is in the nature of things that liberty, equality and justice are as much dear to a member of the armed forces as they are to any other citizen. Therefore any curtailment thereof should not be more than what is absolutely necessary in the interest of discipline and they should not be of such a nature which will create an impression on the members of the armed forces that an injustice had been done to them by depriving more of their natural rights than that was necessary for safeguarding the interests of the nation. We are of the firm conviction that the interest of discipline will be more served not by the quantum and rigidity of the restrictions imposed, but by making an approach which is in more con-

sonance with our own democratic traditions and make restrictions as bearable as possible. Exercising the power delegated by the Constituent Assembly to both Houses of Parliament, the Joint Committee by a majority view has negated almost all of the Fundamental Rights guaranteed by the Constitution in their application to the members of the Indian Navy. While Article 33 gave the Parliament a right to determine as to what extent any of the Rights conferred by Chapter 3 in their application to members of the armed forces be restricted or abrogated the Joint Committee failed to confirm to this Constitutional direction, and they have summarily decided that the members of the armed services shall not have any fundamental right at all. This approach is not only wrong, but we submit it is highly dangerous. Blanket Suppression of rights may be quite easy to declare but such an act shall breed nothing but discontent. Hence not only the purpose for which these restrictions are made will not be served but the effect will be just the contrary. The Bill denies even the right to form cultural organisations within the armed forces. This will not facilitate to develop a sense of service to the State but it will only help to create a sense of frustration alone. Therefore we consider that the entire provisions of this Bill which negative the fundamental rights to the members of the navy should be reconsidered by both Houses of Parliament and such modifications should be introduced which will curtail the fundamental rights only to that extent which is strictly necessary for the maintenance of discipline and discharge of their duties. Let not both Houses of Parliament be parties to an act which would have far reaching repercussions of the members of our armed forces, the corner stone of the liberty of our people and security of our State. An important provision of the Bill is the one which excludes women from the right of joining the Indian Navy. It will be superfluous if we record in detail the courage and capacity shown by the women of India in the past and especially during our glorious freedom struggle. In almost all the countries women have proved themselves to be equal to men if not more and today there is no sphere of life nor is there any kind of work where women cannot compete with men. Moreover we feel that the admission of women into our armed services will, to a very large extent, have a salutary and welcome effect upon the outlook and morale of our fighting men. This injustice done to our women should be removed and we recommend that the clause which prohibits women from joining the navy be removed.

The next point which we wish to bring to the notice of both Houses of Parliament are the provisions relating to the right of a

member of the armed forces to communicate with anyone else on other than military matters. The majority of our colleagues have deprived both Houses of Parliament of a sacred and democratic privilege enjoyed even by the House of Commons, i.e., the privilege of every member of Parliament to receive letters from members of armed forces and a corresponding right to communicate with members of Parliament for the armed forces personnel also. The Bill as reported by the Joint Committee at least shelves this right to a dubious uncertainty. The same question concerning the above privilege came recently before the House of Commons for their consideration and the House reiterated the privilege in para 3 of the Report of the Privileges Committee dated 5th April, 1955, which runs as follows:—

“Your Committee have reached the conclusion that the actions complained of are a matter for competent minister. It has long been recognised that a member of the armed forces is entitled to correspond with members of Parliament on other than military matters. Your committee regard it as important that this right should be maintained and that members of the armed forces who communicate with members of Parliament should not be subjected either to pressure or punishment on that account”.

We feel that the provisions of the Bill should not transgress upon this right.

We feel constrained to remark that the drafting of the Bill as a whole and especially the definition of the offences are not only far from satisfactory but they are capable of exposing even innocent acts of people into very serious offences. We cannot for fear of length tabulate all the instances but one of them would give a pointer to others. Clause 46 of the Bill defines mutiny. Clause 46—b would read as follows:—

“Mutiny means any assembly or combination of two or more persons subject to naval law with the common object of showing contempt for or insubordination to or embarrassing lawful naval authority”.

It is to be noted that mutiny is the highest form of military offence and the punishment is DEATH. In no statute in any civilised country in the world we could find such an elusive, evasive and *in toto* subjective term as “embarrassment” being made as an ingredient of a serious offence not to speak of an offence punishable with death. After a laborious and tiring search we were able to find out this terminology in the Government Servants

Conduct Rules (Central). The same rule came up for consideration before a Bench of the Calcutta High Court in 1955 and the learned judge remarked *inter alia* that this word cannot be an ingredient of even a misconduct. This word "embarrassment" is so subjective that any act even, an innocent one may embarrass any naval officer. It all depends upon the mental condition of the officer concerned at a given time. If we leave it as it is we will be handing over the life of a naval person to the fanciful imaginations of any naval officer. We have quoted this definition as an example. Almost all provisions relating to offences are worded in ambiguous and vague terms. There is a serious danger of misuse of authority taking advantage of this lacuna in definitions of offences by which any innocent man may be roped in. This is further, a transgression upon well accepted canons of natural justice. Therefore we recommend that the offences be redefined in clear, precise, unambiguous and definite terms so that we shall prevent as far as possible any possible misuse of authority.

The next important question is regarding the right of appeal upon conviction, by a court martial. In spite of our repeated efforts majority of our colleagues took a stand which with all respect to them we may say is not in consonance with our own primary conception of justice. It is a well accepted principle that a single tribunal may err and the life and liberty of the citizen is so valuable sacred a right that no civilised society can take the risk of entrusting that to a single tribunal. It is necessary in the interest of simple justice that at least a second authority, exercising judicial functions should get itself satisfied about the guilt of an accused before he is thrown to the gallows. In the United Kingdom the Courts Martial (Appeal) Act, 1951, provided for right of a first appeal to the Courts Martials Appeal Court consisting of the Lord Chief Justice of England and other judges of the High Court, Lords Commissioners of Justiciary and other legal men. This appeal shall lie both on points of fact and law. Further there is a right of second appeal to the House of Lords on points of law. In Australia, Courts Martial Appeal Act, 1955, provides for appeals to an appellate tribunal. In Canada, Clause 43 of the National Defence Act, 1950, provides for appeal to a judicial appellate authority called the Courts Martial Appeal Board. In the United States of America, a board is constituted, which has the authority to decide appeals on questions of fact and law in the first instance. As a matter of fact, the power of this Board of Review is far more wide than that of an appellate court having jurisdiction to hear and decide criminal appeals. This Board enjoys "a charter of appellate power far broader than granted to any American appellate court in

any criminal case" (The American Legal System—by *Lewis Mayers*). From the decision of this board there is a right of appeal to the Court of Military Appeals consisting of three civilian judges appointed by the President for an irrevocable term of fifteen years, on recommendation of the Senate. Even the scope of appeal here is far wider and appeal may lie "on good cause shown and also if there is an error in the findings", and "if the error materially prejudices the substantial right of the accused". Again both the Supreme Court and the Federal Court have powers of quashing the sentence by court martials on grounds such as "questions of jurisdiction and also illegality in the proceedings". When all the above-mentioned Countries have not only found it convenient but necessary to constitute different courts of appeals, we fail to understand as to why we cannot also provide for appeals under the act. We repeat that to err is human and the risk of committing an error is far more less if the decision is taken by more than one and reviewed and re-checked at different levels before the citizen is deprived of his liberty and even life. We, therefore, make a strong recommendation in the name of liberty, which we all consider very dear, justice, which we feel indispensable to our own civilization and a sense of security to all members of the armed forces, to incorporate suitable provisions in the Bill constituting independent tribunals of appeal with judicial powers having authority to hear and decide appeals from decisions of courts martial at least in cases where the sentence involves imprisonment or death.

To point out another specific instance is Clause 65. The said Clause almost prevents the ratings from making complaints regarding bad food. While dealing with the implication of this clause we wish to make certain observations regarding the peculiar conditions in the Navy which do not exist as they are in the other wings of the armed services. Boys aged 15 in their formative stage of character and personality with turbulent imaginations of life are recruited and sent in the ships almost ostracised from society. It is quite natural that as their natural aspirations for a full social life being denied there may develop an inherent tendency to express themselves fully. Under this psychological make up it is necessary to take a more liberal view of the question of discipline in the Navy than in the Army and Air Force. We are convinced that such an approach will not only not in any way affect the sense of discipline among the ratings but it will avoid many a case of breach of discipline. Further food is an intricate and often difficult problem in the Navy. The question of food also is one which affects more easily the temperament and outlook of men. Under these circumstances, the interest of discipline will be best served by giving ample opportunities for the ratings to air their grievances and get them redressed

as quickly as possible. Any attempt to gag such complaints will only create breeding grounds of hatred and discontent. Here again we are constrained to remark that the failure of the Committee to record evidence has deprived us of the benefit of immense experience of the past in the Indian Navy. We are reminded of the glorious R.I.N. revolt of 1946. Though the general cause of the revolt was the impetus given by the National Movement in India and the post-war movements for liberation from the rule of the colonial powers, from facts we understand that the immediate cause of the revolt was the bad quality of the food served, the absence of suitable methods of complaining and the failure of the naval authorities to redress the grievances. After the mutiny we understand that the Naval Headquarters conducted a full-fledged enquiry and certain recommendations had been made. In the result we recommend to both Houses that Clause 65 of the Bill be dropped *in toto* and suitable provisions inserted incorporating a fool-proof grievance procedure in the Navy.

The Bill contains a large number of provisions which makes startling discriminations between officers and men of the Nav. This discrimination will be not only not conducive to maintenance of morale and good discipline but it will breed discontent and seriously impair healthy relationship between officers and men. In this connection, we may record our disagreement with the provisions contained in Clause II of the Bill. We are of the opinion that a mandatory proviso should be added to Clause II (1) making it incumbent upon the President to appoint one-third of the total number of Commissioned Officers by promotion from the ranks. It has been our experience that there is no dearth of qualified, experienced and suitable personnel among the ranks of our Armed Forces, who could become first rate officers. In our country, where the Constitution guarantees equality of opportunities individual merit alone should be the sole criterion for holding responsible positions in the administrative set-up. For that, there should be unrestricted opportunity for everyone to rise from the lowest ranks to the highest position in the country. We are told that at present twelve and half per cent. of the total appointments to the officer cadre in the Navy are made by promotions from the ranks. This, we feel, is inadequate and is a terrible injustice to our boys in the Navy who have proved themselves to be the best fighting men in the world. The resultant stagnation from this lack of opportunity to get promotion to a large number of the personnel is seriously affecting initiative and morale of the ranks. This injustice should be removed.

The punishments prescribed for various offences in the Bill, we feel are too severe, unrealistic and inhuman. Moreover no distinction has been made between the punishments to be awarded for offences

committed during peace and war. Even though it has been said that punishment should be deterrent in character we seriously disagree with that statement. Never in the history of human conduct discipline has been maintained by the severity of punishments. Therefore, we recommend that the various punishments should be suitably modified to suit strictly the requirements of discipline. Further, these men who are punished for some offence or other are not to be thrown over board from the services. They are to be reclaimed, they are to be rehabilitated and for that any punishment should not be ruinous in character.

We are also constrained to disagree with the provisions of the Bill relating to jurisdiction of courts martials. We feel it inadvisable and often dangerous to give exclusive jurisdiction to courts martial to try any offence committed by any person subject to naval law, irrespective of the place where the offences are committed. Generally when the person aggrieved is a civilian and the offence is against the State courts martial should not be given the jurisdiction to try such offences. The maintenance of law and order being a primary responsibility of the civil authorities, the jurisdiction to try offences not of a purely military character should be vested in civil courts alone. Otherwise there is a very serious risk of justice being trammelled with when the offender and the judges have community of interests. Even in the case of certain offences in which all parties involved are service personnel the jurisdiction to try them should be vested in the civil courts. For example, the offence of murder and rape, when committed by service personnel, should be tried by civil courts. In this connection we may quote with advantage the following recommendations made by the Select Committee on the Naval Discipline Act (U.K.):

“The Royal Navy should have the jurisdiction to try also civil offences, *with a few major exceptions, such as murder, treason, and rape whenever committed*” (italics ours).

Therefore, we recommend that the provisions of the Bill should be so modified to invest civil courts with jurisdiction to try offences, such as murder, treason, and rape, committed by naval personnel and other offences when committed against civilians.

We also find that there are certain provisions in the Bill which invest naval authorities with powers to punish summarily even without giving adequate opportunity to the alleged delinquents. We consider these as arbitrary violations of principles of natural justice. The fundamental principle of jurisdiction, i.e., the principle of “*Ardie Alterum Partem*” should be applicable in all cases of trial and

punishment, however insignificant the offence or misconduct might be. We recommend to both Houses of Parliament that necessary provisions should be incorporated in the Bill, so that, there shall neither be a trial nor a punishment under this Bill unless a charge clearly laying down the manner, the place, and the time at which the offence is committed written in a language understandable to the accused is served on him, and ample opportunity given to the accused to answer and refute those charges. The trial in any case shall be public and the liberty and life of any member of the armed forces shall not be deprived of except according to due process of law, the law being the ordinary criminal law of the land. It is to be pointed out in this connection that in the United States all trials by courts martial are subject to the wellknown "due process clause" of the 14th Amendment of the U.S.A. Constitution.

We may also point out that, the overall administrative set up of the Indian Navy should be radically changed. The present system as incorporated in this Bill provides for too much concentration of power in the Chief of the Naval Staff. This should be avoided as far as possible so that our system of democracy may be marked out with as little interference as possible and ultimate parliamentary control be established on at least the basic structure and working of our Armed Forces. We suggest that the British method is more advisable in this connection. Provisions should be incorporated in this Bill for the establishment of some such authority as the Board of Admiralty in England with adequate civilian representation which shall exercise supervisory and directive control over the Indian Navy.

We have made our observations with the *bona fide* belief that the law that Parliament enacts today in respect of the Indian Navy should be a law which will facilitate the development of a Navy composed of contented men and women whose primary allegiance shall be to the people of India. To achieve such a fighting force our object shall be not to suppress their democratic rights as far as possible. But we should endeavour our best to give them as much rights as possible. We hope that both Houses, when considering this Bill, will seriously take into account the suggestions made by us.

NEW DELHI;
The 8th November, 1957.

T. C. N. MENON.
K. K. WARIOR.
V. K. DHAGE.
V. PRASAD RAO.

IV

I regret that I am not able to agree with the majority view of the Select Committee on the following points:—

(1) *Provision of Judicial Appeal.*—No judicial appeal against court martial decisions is provided in the Bill. It was argued that similar is the position in the Air Force Act and the Army Act. Considerations of delay and discipline were also pointed out. However, these are not reasons weighty enough to override the necessity of a judicial appeal. A judicial appeal always gives a sense of security and will thus increase a sense of real discipline in our Armed Forces. If an independent judicial appeal cannot be provided in this Bill, a separate Act on the lines of Court Martial (Appeals) Act, 1951 in U. K. and a similar Act of 1955 in Australia should be passed in our country. In U.S.A., and Canada also, judicial appeals are allowed against court martial decisions.

(2) *Substitution for the word "petty officer".*—The word "petty" is rather offensive and quite a large number of the members of the Committee felt that it should be substituted by the word "junior" or some such word.

(3) In Section 22(4) of the original Bill, provision is made for furnishing a discharge certificate in the mother tongue of the seaman and also in the English language. The certificate must also be in the National language, and in the English language only, if the seaman wants it.

(4) *Modification of Fundamental Rights.*—Section 24(2) (a) of the original Bill lays down certain restrictions on the right of association, so much so, that persons subject to Naval Law are not allowed to join even organisations dealing in purely "scientific" matters. This is hardly desirable. Even during the war times, engineers and others working in the Defence Forces of various countries were responsible for many inventions and discoveries. This should be allowed.

NEW DELHI;

MOOL CHAND JAIN.

The 7th November, 1957.

THE NAVY BILL, 1957

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title and commencement.
2. Persons subject to naval law.
3. Definitions.
4. Fundamental rights to apply to persons subject to naval law with modifications.

CHAPTER II

THE NAVAL FORCES

5. Power of Central Government to raise and maintain naval forces.

CHAPTER III

SPECIAL PROVISIONS RELATING TO DISCIPLINE IN CERTAIN CASES

6. Provision respecting discipline of persons under engagement to serve Central Government.
7. Relations between the members of the Navy, Army and Air Force acting together.
8. Provision respecting discipline of master of merchant vessel under convoy.

CHAPTER IV

COMMISSIONS, APPOINTMENTS AND ENROLMENTS

9. Eligibility for appointment or enrolment.
10. Commissions and appointments.
11. Enrolment.
12. Validity of enrolment.
13. Oath of allegiance.

CHAPTER V

CONDITIONS OF SERVICE

CLAUSES

14. Liability for service of officers and seamen.
15. Tenure of service of officers and seamen.
16. Discharge on expiry of engagement.
17. Provisions as to discharge.
18. Saving of powers of dismissal by naval tribunals.
19. Restrictions respecting right to form associations, freedom of speech, etc.

CHAPTER VI

SERVICE PRIVILEGES

20. Immunity from attachment.
21. Immunity from arrest for debt.
22. Immunity of persons attending court-martial or disciplinary court from arrest.
23. Remedy of aggrieved persons.
24. Priority of hearing of cases concerning persons in the naval service.
25. Right of the Chief of the Naval Staff or commanding officers to obtain copies of judgments or orders made by a criminal court.
26. Saving of rights and privileges under other laws.

CHAPTER VII

PROVISIONS AS TO PAY, PENSION, ETC., AND MAINTENANCE OF FAMILIES

27. Deductions from pay, etc., not to be made unless authorised.
28. Deductions from pay and allowances of officers.
29. Deductions from pay and allowances of seamen.
30. Deductions awarded by naval tribunals.
31. Liability for maintenance of wife and children.
32. Limit of certain deductions.
33. Remission of deductions.

CHAPTER VIII

ARTICLES OF WAR

CLAUSES

34. Misconduct in action by certain officers.
35. Misconduct in not pursuing the enemy and not assisting a friend in view.
36. Delaying or discouraging the service, deserting post, etc.
37. Penalty for disobedience in action.
38. Penalty for spying.
39. Correspondence, etc., with the enemy.
40. Improper communication with the enemy.
41. Deserting posts and neglect of duty.
42. Mutiny defined.
43. Mutiny punishable with death.
44. Persons on board ship or aircraft seducing naval personnel from allegiance.
45. Striking superior officer.
46. Ill-treating subordinates.
47. Disobedience and insubordination.
48. Quarrelling, fighting and disorderly behaviour.
49. Desertion.
50. Inducing person to desert.
51. Breaking out of ship and absence without leave.
52. Drunkenness.
53. Uncleanliness or indecent acts.
54. Cruelty and conduct unbecoming the character of an officer
55. Losing ship or aircraft.
56. Offences by officers in charge of convoy.
57. Taking unauthorised goods on board ship.
58. Offences in respect of property.
59. Arson.
60. Falsifying official documents and false declarations.
61. Malingering, etc.
62. Penalty for endeavouring to stir up disturbance on account of unwholesomeness of victuals or other just grounds.
63. Offences in respect of papers relating to prize.

CLAUSES

64. Offences in respect of prize.
65. Offences in respect of persons on board a prize ship.
66. Unlawful taking or ransoming of prize.
67. Breaking bulk on board a prize ship.
68. Violation of the Act, regulations and orders.
69. Offences in relation to court-martial.
70. Fraudulent entry.
71. Escape from custody.
72. Failure to assist in detention of offenders.
73. Penalty for failure to attend by members of reserve forces when called up.
74. Offences against good order and naval discipline.
75. Attempts.
76. Abetment of offences.
77. Civil offences.
78. Jurisdiction as to place and offences.
79. Jurisdiction as to time.
80. Trial after a person ceases to be subject to naval law.

CHAPTER IX

PROVISIONS AS TO PUNISHMENTS

81. Punishments.
82. Provisions as to award of punishment.

CHAPTER X

ARREST

83. Power to issue warrants of arrest.
84. Arrest without warrant.
85. Procedure and conditions of naval custody.
86. Investigation after arrest.
87. Duty to receive or keep in custody.
88. Procedure before trial.
89. Provost-marshals.

CHAPTER XI

CHARGE

CLAUSES

- 90. Joinder of charges.
- 91. Acts amounting to different offences.
- 92. Joinder of accused persons.

CHAPTER XII

AUTHORITIES HAVING POWER TO AWARD PUNISHMENTS

- 93. Power of court-martial and commanding officers to try offences.
- 94. Power of Central Government, Chief of the Naval Staff and other officers to impose forfeiture of time or seniority.
- 95. Disciplinary courts when may be constituted.
- 96. Constitution and procedure of disciplinary courts.
- 97. Constitution of courts-martial.

CHAPTER XIII

PROCEDURE

Procedure of courts-martial

- 98. Where courts-martial to be held.
- 99. Trial judge advocate.
- 100. Courts-martial to be public.
- 101. Commencement of proceedings.
- 102. Objections to members.
- 103. Further objections.
- 104. Administering oath or affirmation.
- 105. Arraignment.
- 106. Opening of prosecution case.
- 107. Calling of prosecution witness not in the original list.
- 108. Swearing of interpreter and shorthand-writer.
- 109. Objection to interpreter or shorthand-writer.
- 110. Swearing of witness.
- 111. Plea of no case and defence of accused.
- 112. Adjournment to view.
- 113. Summing up by the trial judge advocate.
- 114. Duties of the trial judge advocate.

CLAUSES

- 115. Duties of the court.
- 116. Retirement to consider finding.
- 117. Announcement of the finding.
- 118. Drawing up of the finding.
- 119. Evidence of character and previous convictions.
- 120. Consideration of the sentence.
- 121. Announcement of the sentence.
- 122. Adjournment.
- 123. Provisions relating to dissolution of courts-martial.
- 124. Ascertaining the opinion of the court.
- 125. Finding that the offence was committed with intent involving less degree of punishment.
- 126. Alternative findings.
- 127. Finding lesser offence proved on charge of greater offence.
- 128. Transmission of proceedings to the Judge Advocate General of the Navy.
- 129. Right of accused to copy of proceedings and sentence.

Rules as to evidence

- 130. Application of the Evidence Act.
- 131. Accused competent witness for defence.
- 132. Judicial notice.
- 133. Presumptions as to certain documents.
- 134. Summoning of witnesses.
- 135. Commissions for examination of witnesses.
- 136. Examination of witnesses on commission.
- 137. Power to summon and examine material witnesses.

Compensation to aggrieved persons out of fine

- 138. Power of court to pay compensation out of fine.

Power of courts-martial respecting contempt, etc.

- 139. Summary punishment for contempt of court by person subject to naval law.
- 140. Summary punishment for contempt of court by person not subject to naval law.

CLAUSES

141. Powers of court-martial when certain offences are committed by persons not subject to naval law.

142. Powers of courts-martial and disciplinary courts in relation to proceedings under this Act.

Lunacy of accused

143. Accused found insane during trial.

144. Lunacy of the accused at the time of offence.

Disposal of property

145. Disposal of property pending trial.

146. Disposal of property regarding which offence is committed.

CHAPTER XIV

EXECUTION OF SENTENCES

147. Form of sentence of death.

148. Interim custody until execution of sentence of death.

149. Execution of sentences of death.

150. Place of imprisonment and detention.

151. Commencement of sentence.

152. Imprisonment of offender already under sentence.

153. Change of place of confinement.

154. Discharge or removal of prisoners.

155. Time of detention in naval custody.

156. Removal of insane prisoners.

157. Naval prisons and naval detention quarters.

158. Execution of sentence of fine.

159. Power to make regulations in respect of naval prisons and detention quarters.

CHAPTER XV

JUDICIAL REVIEW OF COURTS-MARTIAL PROCEEDINGS

160. Judicial review by the Judge Advocate General of the Navy.

161. Consideration by the Chief of the Naval Staff.

CHAPTER XVI

**MODIFICATIONS OF FINDINGS AND SENTENCES, PARDONS AND COMMUTATION,
REMISSION AND SUSPENSION OF SENTENCES**

162. Petitions to the Central Government or Chief of the Naval Staff against findings or sentences.

CLAUSES

- 163. Powers of Central Government and the Chief of the Naval Staff in respect of findings and sentences.
- 164. Suspension of sentences.

CHAPTER XVII**OFFENCES IN RELATION TO COURTS-MARTIAL, DISCIPLINARY COURTS AND PRISONS**

- 165. Offences by persons not subject to naval law in relation to courts-martial and disciplinary courts.
- 166. Penalties for aiding escape or attempt to escape of prisoners and for breach of prison regulations.
- 167. Penalty as regards gaolers, etc.

CHAPTER XVIII**JUDGE ADVOCATE GENERAL OF THE NAVY AND OFFICERS OF HIS DEPARTMENT**

- 168. Appointment of the Judge Advocate General of the Navy and his subordinate officers.
- 169. Functions of the Judge Advocate General of the Navy.
- 170. Discharge of functions of the Judge Advocate General of the Navy in his absence.

CHAPTER XIX**DISPOSAL OF THE PRIVATE PROPERTY OF PERSONS DECEASED, MISSING, ETC.**

- 171. Disposal of property of deceased seamen.
- 172. Disposal of property of deceased officers.
- 173. Decision of questions as to ship and service debts and other debts in ship or quarters.
- 174. Nature of the powers of commanding officer or Committee of Adjustment.
- 175. Powers of Central Government to hand over estate of deceased persons to the Administrator-General.
- 176. Disposal of surplus by prescribed persons.
- 177. Disposal of effects not converted into money.
- 178. Termination of liability of commanding officer, Committee, prescribed person and the Central Government.
- 179. Saving of rights of representative.
- 180. Application of sections 171 to 179 to persons of unsound mind.

CLAUSES

- 181. Appointment of Standing Committee of Adjustment in certain cases.
- 182. Exercise of powers by other persons.
- 183. Forfeiture of effects for absence without leave.

CHAPTER XX**REGULATIONS**

- 184. Power to make regulations.
- 185. Regulations to be placed before Parliament.

CHAPTER XXI**REPEALS AND SAVINGS**

- 186. Repeals.
- 187. Provisions as to existing naval forces, appointments, etc.

CHAPTER XXII**TRANSITORY PROVISIONS**

- 188. Powers of officers of the Royal Navy.

Bill No. 24B of 1957

THE NAVY BILL, 1957

(AS AMENDED BY THE JOINT COMMITTEE)

(Words side-lined or under-lined indicate the amendments suggested
by the Committee; asterisks indicate omissions)

A

BILL

to consolidate and amend the law relating to the government
of the Indian Navy.

Be it enacted by Parliament in the Eighth Year of the Republic
of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Navy Act, 1957.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Govern-
ment may, by notification in the Official Gazette, appoint.

2. (1) The following persons shall be subject to naval law wher-
ever they may be, namely:—

Persons sub-
ject to naval
law.

10 (a) every person belonging to the Indian Navy during the
time that he is liable for service under this Act;

(b) every person belonging to the Indian Naval Reserve
Forces when he is—

(i) on active service; or

15 (ii) in or on any property of the naval service includ-
ing naval establishments, ships and other vessels, aircraft,
vehicles and armouries; or

(iii) called up for training or undergoing training in pursuance of regulations made under this Act, until he is duly released from his training; or

(iv) called up into actual service in the Indian Navy in pursuance of regulations made under this Act, until he is duly released therefrom; or

(v) in uniform;

(c) members of the regular Army and the Air Force when embarked on board any ship or aircraft of the Indian Navy, to such extent and subject to such conditions as may be prescribed; 10

(d) every person not otherwise subject to naval law, who enters into an engagement with the Central Government under * * * section 6;

(e) every person belonging to any auxiliary forces raised under this Act, to such extent and subject to such conditions as 15 may be prescribed; and

(f) every person who, although he would not otherwise be subject to naval law, is by any other Act or during active service by regulations made under this Act in this behalf made subject to naval law, to such extent and subject to such con- 20 ditions as may be prescribed.

(2) The following persons shall be deemed to be persons subject to naval law, * * * namely:—

(a) every person ordered to be received, or being a passenger, on board any ship or aircraft of the Indian Navy, to 25 such extent and subject to such conditions as may be prescribed;

* * * * *

(b) every person sentenced under this Act to imprisonment or detention, during the term of his sentence, notwithstanding that he is discharged or dismissed with or without disgrace from 30 the naval service or would otherwise but for this provision cease to be subject to naval law.

Definitions.

3. In this Act, unless the context otherwise requires,—

(1) “active service” means service or duty—

(a) during the period of operation of a Proclamation of 35 Emergency issued under clause (1) of article 352 of the Constitution; or

(b) during any period declared by the Central Govern- ment by notification in the Official Gazette as a period of

active service with reference to any area in which any person or class of persons subject to naval law may be serving;

5 (2) "Chief of the Naval Staff" means the flag officer appointed by the President as Chief of the Naval Staff or in his absence on leave or otherwise an officer appointed by the Central Government to officiate as such or in the absence of such officiating appointment the officer on whom the command devolves in accordance with *regulations made under this Act;

10 (3) "civil offence" means an offence triable by a court of ordinary criminal jurisdiction in India;

9 of 1894. (4) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894, or under any other law for the time being in force;

15 (5) "commissioned officer" means a person holding a commission from the President in the Indian Navy or the Indian Naval Reserve Forces;

(6) "court-martial" means a court-martial constituted under this Act;

20 * * * *

(7) "enemy" includes all armed rebels, armed mutineers, armed rioters and pirates and any person in arms against whom it is the duty of any person subject to naval law to act;

25 (8) "flag officer" means an officer of the rank of Admiral of the Fleet, Admiral, Vice-Admiral or Rear-Admiral;

(9) "Indian Naval Reserve Forces" mean the naval reserve forces raised and maintained by the Central Government;

(10) "Indian Navy" means the regular naval forces raised and maintained by the Central Government;

30 (11) "Indian waters", for the purposes of sections 31, 97 and 99, means the seas extending from the shores of India to such limits as may be prescribed;

35 (12) "naval custody" means the arrest or confinement of a person in the prescribed manner or in accordance with the usages of the naval service, and includes military or air force custody;

(13) "naval offence" means any of the offences under sections 34 to 76;

(14) "naval service" means the naval organisation of India;

(15) "naval tribunal" means a court-martial constituted under section 97 and includes a disciplinary court constituted under section 96, a commanding officer or other officer or authority exercising powers of punishment under this Act;

(16) "officer" means a commissioned officer and includes a subordinate officer but does not include a petty officer;

(17) "petty officer" means a seaman rated as such and includes a chief petty officer;

(18) "prescribed" means prescribed by regulations made under this Act;

(19) "provost-marshal" means a person appointed as such under section 89 and includes any of his deputies or assistants or any other person lawfully exercising authority under him or on his behalf;

(20) "seaman" means a person in the naval service other than an officer;

(21) "ship", except in the expression "on board a ship", includes an establishment of the Indian Navy commissioned as a ship in accordance with the custom of the navy;

(22) "subject to naval law" means liable to be arrested and tried under this Act for any offence;

(23) "subordinate officer" means a person appointed as an acting sub-lieutenant, a midshipman or a cadet in any branch of the Indian Navy or the Indian Naval Reserve Forces, but does not include a cadet whilst under training in a joint service institution;

(24) "superior officer", when used in relation to a person subject to naval law, means any officer or petty officer who is senior to that person under regulations made under this Act and any officer or petty officer, who though not so senior to that person, is entitled under this Act or the regulations made thereunder to give a command to that person, and includes, when such person is serving under prescribed conditions, an officer, junior commissioned officer, warrant officer, non-commissioned officer of the regular Army or the Air Force of higher relative rank to that person or entitled under this Act or the regulations made thereunder to give a command to that person;

45 of 1860.

(25) all words and expressions used but not defined in this Act but defined in the Indian Penal Code, shall have the meanings respectively assigned to them in that Code.

4. The rights conferred by Part III of the Constitution in their application to persons subject to naval law shall be restricted or abrogated to the extent provided in this Act.

Fundamental rights to apply to persons subject to naval law with modifications.

CHAPTER II

THE NAVAL FORCES

5. The Central Government may raise and maintain a regular naval force and also reserve and auxiliary naval forces.

Power of Central Government to raise and maintain naval forces.

* * * * *

CHAPTER III

SPECIAL PROVISIONS RELATING TO DISCIPLINE IN CERTAIN CASES

6. (1) If any person * * not otherwise * subject to naval law enters into an engagement with the Central Government to serve,—

Provision respecting discipline of persons under engagement to serve Central Government.

(a) in a particular ship; or

(b) in such particular ship or in such ships as the Central Government, the Chief of the Naval Staff, or the prescribed officer may, from time to time, determine;

and agrees to become subject to naval law upon entering into the engagement, that person shall, so long as the engagement remains in force and notwithstanding that for the time being he may not be serving in any ship, be subject to naval law.

(2) The Central Government may, by order, direct that, subject to such exceptions as may in particular cases be made by or on behalf of the Chief of the Naval Staff, persons of any such class as may be specified in the order shall, while being subject to naval law by virtue of this section, be deemed to be officers, petty officers or other seamen, as the case may be, for the purposes of this Act or of such provisions of this Act as may be so specified.

7. (1) When members of the regular Army and the Air Force or of either of these forces are serving with members of the Indian Navy or Indian Naval Reserve Forces under prescribed conditions, then those members of the regular Army or the Air Force shall exercise such command, if any, and be subject to such discipline as may be prescribed.

Relations between the members of the Navy, Army and Air Force acting together.

(2) Nothing in sub-section (1) shall be deemed to authorise the exercise of powers of punishment by members of the regular Army or the Air Force over members of the Indian Navy or the Indian Naval Reserve Forces, except as provided in clause (e) of sub-section (3) of section 93.

5

Provision
respecting
discipline
of master of
merchant
vessel under
convoy.

8. (1) Every master or other person for the time being in command of any merchant or other vessel comprised in a convoy under the command of an officer of the Indian Navy shall obey, in all matters relating to the navigation or security of the convoy, any directions which may be given by such officer, and shall take such precautions for avoiding the enemy as may be required by any such directions.

10

(2) If any such directions are not obeyed, any such officer or any person acting under his orders may compel obedience by force of arms without being liable for any injury or loss of life or any danger to or loss of property resulting therefrom.

15

CHAPTER IV

COMMISSIONS, APPOINTMENTS AND ENROLMENTS

Eligibility for
appointment
or enrol-
ment.

9. (1) No person who is not a citizen of India shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except with the consent of the Central Government:

20

Provided that nothing in this section shall render a person ineligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces on the ground that he is a subject of Nepal.

25

(2) No woman shall be eligible for appointment or enrolment in the Indian Navy or the Indian Naval Reserve Forces except in such department, branch or other body forming part thereof or attached thereto and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf.

30

Commissions
and appoint-
ments.

10. (1) Officers other than subordinate officers shall be appointed by commission granted by the President.

(2) The grant of the commission shall be notified in the Official Gazette and such notification shall be conclusive proof of the grant of such commission.

35

(3) Subordinate officers shall be appointed in such manner and shall hold such rank as may be prescribed.

* * * *

Enrolment.

11. (1) Save as otherwise provided in this Act, the terms and conditions of service of seamen, the person authorised to enrol for service as seamen and the manner and procedure of such enrolment shall be such as may be prescribed.

5 (2) No person shall be enrolled as a seaman in the Indian Navy * * * for a period exceeding fifteen years in the first instance:

Provided that in the case of a minor the said period of fifteen years shall be reckoned from the date on which he attains the age of seventeen.

10 (3) Notwithstanding anything contained in any other law for the time being in force,—

(a) the enrolment of any person under this Act shall be binding on him both during his minority and after he attains majority;

15 (b) neither the parent or guardian of a minor duly enrolled under this Act nor any other person shall be entitled to claim custody of the said minor as against the Central Government or any of its officers or other persons set over him.

12. Where a person after his enrolment has for a period of three 20 months from the date of such enrolment been in receipt of pay as a seaman, he shall be deemed to have been duly enrolled and shall not thereafter be entitled to claim his discharge on the ground of any irregularity of illegality in his engagement or any other ground whatsoever; and if within the said three months such person claims 25 his discharge, no such irregularity or illegality or other ground shall, until such person is discharged in pursuance of his claim, affect his position as a seaman in the naval service or invalidate any proceedings, act or thing taken or done prior to his discharge.

Validity of enrolment.

* * * * *

30 13. Every officer and every seaman shall, as soon as may be, after appointment or enrolment make and subscribe before the commanding officer of the ship to which he belongs, or the prescribed officer an oath or affirmation in the following form, that is to say:—

Oath of allegiance.

35 "I.....do ^{swear in the name of God}_{solemnly affirm} that I will bear true faith and allegiance to the Constitution of India as by law established and that I will, as in duty bound, honestly and faithfully serve in the naval service and go wherever ordered by sea, land or air, and that I will observe and obey all 40 commands of the President and the commands of any superior officer set over me, even to the peril of my life."

CHAPTER V

CONDITIONS OF SERVICE

Liability for
service of
officers
and seamen.

14. (1) Subject to the provisions of sub-section (4), officers and seamen shall be liable to serve in the Indian Navy or the Indian Naval Reserve Forces, as the case may be, until they are duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign, or released. 5

(2) No officer shall be at liberty to resign his office except with the permission of the Central Government and no seaman shall be at liberty to resign his post except with the permission of the prescribed officer. 10

* * * * *

(3) The acceptance of any resignation shall be a matter within the discretion of the Central Government or the officer concerned, as the case may be. 15

(4) Officers retired or permitted to resign shall be liable to recall to naval service in an emergency in accordance with regulations made under this Act, and on such recall shall be liable to serve until they have been duly discharged, dismissed, dismissed with disgrace, retired, permitted to resign, or released. 20

* * * * *

Tenure of
service of
officers and
seamen.

15. (1) Every officer and seaman shall hold office during the pleasure of the President.

(2) Subject to the provisions of this Act and the regulations made thereunder,— 25

(a) the Central Government may discharge or retire from the naval service any officer or seaman;

(b) the Chief of the Naval Staff or any prescribed officer may discharge from the naval service any seaman. 30

* * * * *

Discharge
on expiry of
engagement.

16. Subject to the provisions of section 18, a seaman shall be entitled to be discharged at the expiration of the term of service for which he is engaged unless—

(a) such expiration occurs during active service in which case he shall be liable to continue to serve for such further period as may be required by the Chief of the Naval Staff; or 35

(b) he is re-enrolled in accordance with the regulations made under this Act.

17. (1) A seaman entitled to be discharged under section 16 shall be discharged with all convenient speed and in any case within one month of his becoming so entitled:

Provisions as to discharge

Provided that where a seaman is serving overseas at the time he becomes entitled to be discharged, he shall be returned to India for the purpose of being discharged, with all convenient speed, and in any case within three months of his becoming so entitled:

Provided further that where such enrolled person serving overseas does not desire to return to India, he may be discharged at the place where he is at the time.

(2) Every seaman discharged shall be entitled to be conveyed free of cost from any place he may be at the time to any place in India to which he may desire to go.

(3) Notwithstanding anything contained in the preceding sub-sections, an enrolled person shall remain liable to serve until he is duly discharged.

(4) Every seaman who is dismissed, discharged, retired, permitted to resign or released from service shall be furnished by the prescribed officer with a certificate in the language which is the mother tongue of such seaman and also in the English language setting forth—

(a) the authority terminating his service;

(b) the cause for such termination; and

(c) the full period of his service in the Indian Navy and the Indian Naval Reserve Forces.

18. Nothing in this Chapter shall affect the award by a naval tribunal of the punishment of dismissal with disgrace, or dismissal from the naval service under this Act.

Saving of powers of dismissal by naval tribunals.

* * * * *

19. (1) No person subject to naval law shall, without the express sanction of the Central Government,—

Restrictions respecting right to form associations, freedom of speech, etc.

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations, or

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the Armed Forces of the Union or is not of a purely social, recreational or religious nature.

Explanation.—If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature, the decision of the Central Government thereon shall be final.

(2) No person subject to naval law shall attend or address any meeting or take any part in any demonstration organised by any body of persons for any political purposes or for such other purposes as may be specified in this behalf by the Central Government. 5

(3) No person subject to naval law shall communicate with the press or publish or cause to be published any book, letter or other document having bearing on any naval, army or air force subject or containing any fact or opinion calculated to embarrass the relations between the Government and the people or any section thereof or between the Government and any foreign country, except with the previous sanction of the Central Government. 10 15

(4) No person subject to naval law shall whilst he is so subject practise any profession or carry on any occupation, trade or business without the previous sanction of the Chief of the Naval Staff.

CHAPTER VI

SERVICE PRIVILEGES

Immunity
from attach-
ment.

20. The arms, clothes, equipments, accoutrements or necessities of any person in the naval service, while subject to naval law, shall not be seized, nor shall the pay and allowances or any part thereof of such person be attached under any process or direction issued by, or by the authority of, any court or public servant in respect of any claim, decree or order enforceable against him. 25

Immunity
from arrest
for debt.

21. (1) No person in the naval service shall, so long as he is subject to naval law, be liable to be arrested for debt under any process or direction issued by, or by the authority of, any court or public servant. 30

(2) If any such person is arrested in contravention of the provisions of sub-section (1), the court or public servant by whom or by whose authority such process or direction was issued shall on complaint by the person arrested or by his superior officer enquire into the case and if satisfied that the arrest was made in contravention of sub-section (1), shall make an order for the immediate discharge of the person arrested and may award to the complainant the costs of the complaint to be recoverable in the same manner as if such costs were awarded to him by a decree against the person at whose instance such process or direction was issued. 35 40

(3) No court-fee shall be payable on a complaint made under sub-section (2) or for recovery of the costs that may be awarded under that sub-section.

22. (1) No president or other member of a court-martial or disciplinary court, no judge advocate, no party to any proceeding before a court-martial or disciplinary court or no advocate or agent of such party, and no witness acting in obedience to a summons to attend a court-martial or disciplinary court shall, while proceeding to, attending or returning from, a court-martial or disciplinary court, be liable to arrest under any civil or revenue process.

Immunity of persons attending court-martial or disciplinary court from arrest.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial or disciplinary court, as the case may be.

23. (1) If an officer or seaman thinks that he has suffered any personal oppression, injustice or other ill-treatment at the hands of any superior officer, he may make a complaint in accordance with the regulations made under this Act.

Remedy of aggrieved persons.

(2) The regulations referred to in sub-section (1) shall provide for the complaint to be forwarded to the Central Government for its consideration if the complainant is not satisfied with the decision on his complaint.

24. (1) On the presentation to any civil or revenue court by or on behalf of any person in the naval service while subject to naval law of a certificate from the proper naval authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

Priority of hearing of cases concerning persons in the naval service.

(2) The certificate from the proper naval authority shall state the first and last day of the leave granted or applied for and set forth a description of the case with respect to which the leave has been granted or applied for, and shall be duly signed and authenticated by such authority.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such person for priority for the hearing of his case and every such certificate duly signed and authenticated as aforesaid shall be conclusive evidence of the correctness of the contents thereof

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of the leave granted or applied for as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such person on his application, without any payment whatever by him in respect either of the application for such copy or of the copy itself. 5

(5) Every criminal court before which a case is pending against a person in the naval service, shall, so far as may be possible, arrange for the early hearing and final disposal of such case. 10

Right of the Chief of the Naval Staff or commanding officers to obtain copies of judgments or orders made by a criminal court.

25. A criminal court before which any proceedings have been taken against a person in the naval service while subject to naval law shall, on application by the Chief of the Naval Staff or the commanding officer of that person, grant copies of the judgment and final orders in the case free of cost and without delay. 15

Saving of rights and privileges under other laws.

26. The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons in the naval service while subject to naval law or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force. 20

CHAPTER VII

PROVISIONS AS TO PAY, PENSION, ETC., AND MAINTENANCE OF FAMILIES

Deductions from pay, etc., not to be made unless authorised.

27. No deductions other than those authorised by or under this or any other Act shall be made from the pay, pensions, gratuities, allowances and other benefits due to officers and seamen under any regulations for the time being in force. 25

Deductions from pay and allowances of officers.

28. The following deductions may be made from the pay and allowances of an officer without recourse to trial by a naval tribunal, namely:— 30

(1) all pay and allowances for everyday of absence without leave unless an explanation is given to the satisfaction of the commanding officer for such absence and approved by the Chief of the Naval Staff:

Provided that the officer is not dealt with by a naval tribunal for the said absence; 35

(2) all pay and allowances for every day while he is in civil or naval custody or under suspension from duty on a charge for an offence of which he is afterwards convicted by a competent naval tribunal or criminal court and sentenced to imprisonment;

5 (3) all pay and allowances for every day while he is in hospital on account of sickness certified by the prescribed medical officer to have been caused by an act amounting to an offence punishable under this Act:

10 Provided that such certificate is accepted by the Chief of the Naval Staff.

(4) any sum required to make good the pay and allowances of any person subject to naval law which he has unlawfully retained or refused to pay;

15 (5) any sum required to make good any loss, damage or destruction of Government property or property belonging to a naval mess, band or institution which after due investigation appears to the Central Government, the Chief of the Naval Staff or the prescribed officer to have been occasioned by the wrongful act or negligence on the part of the officer;

20 (6) any sum required to be paid for the maintenance of his wife or legitimate or illegitimate children under the provisions of section 31;

(7) any sum which after due investigation appears to the prescribed officer to be due to a service mess or canteen.

25 29. The following deductions may be made from the pay and allowances of a seaman without recourse to trial by a naval tribunal, namely:—

Deductions from pay and allowances of seamen.

30 (1) all pay and allowances for every day of absence without leave unless an explanation is given to the satisfaction of the commanding officer for such absence:

Provided that the seaman is not dealt with by a naval tribunal for the said absence;

35 (2) all pay and allowances for every day he is in confinement on a charge for an offence of which he is afterwards convicted by a competent naval tribunal or criminal court;

(3) all pay and allowances for every day he is in hospital on account of sickness certified by the prescribed medical officer to have been caused by an act amounting to an offence punishable under this Act:

40 Provided that such certificate is accepted by the Chief of the Naval Staff or the prescribed officer;

(4) any sum required to make good any loss, damage or destruction of any property which after due investigation appears to the Central Government or the Chief of the Naval Staff or the prescribed officer to have been occasioned by the wrongful act or negligence on the part of the seaman;

5

(5) any sum required to be paid for the maintenance of his wife or legitimate or illegitimate children under the provisions of section 31.

**Deductions
awarded
by naval
tribunals.**

30. Deductions may be made from the pay and allowances of an officer or seaman in respect of any sentence of fine, forfeiture or 10 mulcts of pay and allowances awarded in pursuance of this Act by a naval tribunal.

**Liability for
maintenance
of wife and
children.**

31. (1) A person subject to naval law shall be liable to maintain his wife and his legitimate or illegitimate children to the same extent as if he were not so subject; but the execution or enforcement of any 15 decree or order for maintenance passed or made against such person shall not be directed against his person, pay, arms, ammunition, equipments, instruments or clothing.

(2) Notwithstanding anything contained in sub-section (1),—

(a) where it appears to the satisfaction of the Central Gov- 20 ernment or the Chief of the Naval Staff or the prescribed authority that a person subject to naval law has without reasonable cause deserted or left in destitute circumstances his wife or any legitimate child unable to maintain himself or has by reason of contracting a second marriage become liable to provide separate 25 maintenance to his first wife; or

(b) where any decree or order is passed under any law against a person who is, or subsequently becomes, subject to naval law for the maintenance of his wife or his legitimate or illegitimate children and a copy of the decree or order is sent to 30 the Central Government or the Chief of the Naval Staff or the prescribed authority;

the Central Government, or the Chief of the Naval Staff or the prescribed authority may direct a portion of the pay of the person so subject to naval law to be deducted from such pay and appropriated 35 in the prescribed manner towards the maintenance of his wife or children, but the amount deducted shall not exceed the amount fixed by the decree or order (if any) and shall not be at a higher rate than the rate fixed by regulations made under this Act in this behalf:

Provided that in the case of a decree or order for maintenance 40 referred to in clause (b) no deduction from pay shall be directed unless the Central Government, or the Chief of the Naval Staff or the

prescribed authority is satisfied that the person against whom such decree or order has been passed or made, has had a reasonable opportunity of appearing, or has actually appeared either in person or through a duly appointed legal practitioner, to defend the case before the court by which the decree or order was passed or made.

(3) Where arrears of maintenance under a decree or order referred to in sub-section (2) have accumulated while the person against whom the decree or order has been made is subject to naval law whether or not deductions in respect thereof have been made from his pay under this section, no step for the recovery of those arrears shall be taken in any court after such person has ceased to be so subject unless the court is satisfied that he has, since he ceased to be subject to naval law, the ability to pay the arrears or any part thereof and has failed to do so.

(4) Notwithstanding anything contained in any other law, where a proceeding for obtaining a decree or order for maintenance is started against a person subject to naval law,—

(a) the court may send the process for service on that person to the commanding officer of the ship on which such person is serving or on the books of which he is borne; or

(b) if, by reason of the ship being at sea or otherwise, it is impracticable for the court to send the process to the commanding officer, the court may, after not less than three weeks' notice to the Central Government, send it to a Secretary to that Government for transmission to the commanding officer for service on that person:

Provided that such service shall not be valid unless there is sent along with the process such sum of money as may be prescribed to enable that person to attend the hearing of the proceeding and to return to his ship or quarters after such attendance.

(5) If a decree or order is passed or made in the proceeding against the person on whom the process is served, the sum sent along with the process shall be awarded as costs of the proceeding against that person.

(6) No process in any proceeding under this section shall be valid against a person subject to naval law if served on him after he is under orders for service at a foreign station or beyond Indian waters.

(7) The production of a certificate of the receipt of the process purporting to be signed by such commanding officer as aforesaid shall be evidence that the process has been duly served, unless the contrary is proved.

(8) Where by a decree or order a copy whereof has been sent to the Central Government or the Chief of the Naval Staff or the prescribed authority under clause (b) of sub-section (2), the person against whom the decree or order has been passed or made is directed to pay as costs any sum sent along with the process [referred to in 5 the proviso to sub-section (4)], the Central Government may pay to the person entitled an amount in full satisfaction of that sum and the amount so paid by the Central Government shall be deemed to be a public demand recoverable from the person against whom the decree or order has been passed or made, and without prejudice to any other 10 mode of recovery, may be recovered by deduction from his pay, in addition to the deductions authorised by sub-section (2).

(9) Where any person subject to naval law has made an allotment of any part of his pay and allowances for the benefit of his wife, that allotment shall not be discontinued or reduced until the 15 Central Government or the Chief of the Naval Staff or the prescribed authority is satisfied that the allotment should no longer be made or should be reduced.

(10) In this section, the expression "pay" includes all sums payable to a person subject to naval law in respect of his services other 20 than allowances in lieu of lodgings, rations, provisions, clothing and travelling allowances.

Limit of
certain
deduction.

32. Except when the deductions are made under sub-sections (1), (2) and (4) of section 28 or sub-sections (1) and (2) of section 29, the total deductions from the pay and allowances of an officer 25 or seaman shall not exceed in any one month one-half of his pay and allowances for that month.

Remission of
deductions.

33. (1) Any deduction from the pay and allowances authorised by or under this Act may be remitted by the Chief of the Naval Staff in his discretion. 30

(2) Such deduction may also be remitted in such manner and to such extent and by such other authority as may be prescribed.

CHAPTER VIII

ARTICLES OF WAR

Misconduct
in action
by certain
officers.

34. Every flag officer, captain, commander or commanding officer 35 subject to naval law, who,—

(a) upon signal of battle or on sight of a ship of an enemy which it may be his duty to engage, does not use his utmost exertion to bring his ship into action; or

(b) his ship being in action does not, during such action in 40 his own person and according to his rank, encourage the persons under his command to fight courageously; or

(c) surrenders his ship to the enemy when capable of making a successful defence; or

(d) in time of action, improperly withdraws from the fight;
shall,

if he has acted traitorously, be punished with death;

if he has acted from cowardice, be punished with death or
5 such other punishment as is hereinafter mentioned; and

if he has acted from negligence or through other default, be
punished with imprisonment for a term which may extend to
seven years or such other punishment as is hereinafter men-
tioned.

10 35. Every officer subject to naval law, who,—

(a) forbears to pursue the chase of any enemy *
beaten or flying; or

(b) does not relieve and assist a known friend in view to
the utmost of his power; or

15 (c) during war or active service or in action, improperly
forsakes his station;

shall,

if he has acted traitorously, be punished with death;

if he has acted from cowardice, be punished with death or
20 such other punishment as is hereinafter mentioned; and

if he has acted from negligence or through other default,
be punished with imprisonment for a term which may extend to
seven years or such other punishment as is hereinafter men-
tioned.

25 36. When any action or any service is commanded, every person
subject to naval law, who,—

(a) delays or attempts to delay or discourages such action
or service upon any pretence whatsoever; or

(b) in the presence or vicinity of the enemy deserts his post;
30 or

(c) in the presence or vicinity of the enemy sleeps upon his
watch;

shall be punished with death or such other punishment as is herein-
after mentioned.

35 Explanation.—In this section, service means a naval operation in
war or during active service and includes a naval demonstration.

Misconduct
in not pur-
suing the
enemy and
not assisting
a friend
in view.

Delaying or
discouraging
the service,
deserting
post, etc.

Penalty for disobedience in action.

37. Every person subject to naval law who disobeys, or does not use his utmost exertions to carry, the orders of his superior officers into execution when ordered to prepare for action, or during the action, shall,

if he has acted traitorously, be punished with death; 5

if he has acted from cowardice, be punished with death or such other punishment as is hereinafter mentioned; and

if he has acted from negligence or through other default, be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned. 10

Penalty for spying.

38. Every person not otherwise subject to naval law who is or acts as a spy for the enemy shall be punished under this Act with death or such other punishment as is hereinafter mentioned as if he were a person subject to naval law. 15

Correspondence, etc., with the enemy.

39. Every person subject to naval law, who,—

(a) traitorously holds correspondence with the enemy or gives intelligence to the enemy; or

(b) fails to make known to the proper authorities any information he may have received from the enemy; or 20

(c) assists the enemy with any supplies; or

(d) having been made a prisoner of war, voluntarily serves with or aids the enemy; 25

shall be punished with death or such other punishment as is hereinafter mentioned.

Improper communication with the enemy.

40. Every person subject to naval law who without any traitorous intention holds any improper communication with the enemy shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.

Deserting post and neglect of duty.

41. Every person subject to naval law, who,— 30

(a) deserts his post; or

(b) sleeps upon his watch; or

(c) negligently performs the duty imposed on him; or

(d) wilfully conceals any words, practice or design tending to the hindrance of the naval service; 35

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

42. Mutiny means any assembly or combination of two or more persons subject to naval law with the common object of,— Mutiny defined.

- (a) disobeying or resisting lawful naval authority;
 - (b) showing contempt for or insubordination to or embarrassing lawful naval authority;
 - (c) undermining naval discipline in a ship or among a body of persons subject to naval law; or
 - (d) seducing any person subject to military, naval or air force law from his allegiance to the Constitution or loyalty to the State or duty to his superior officers;
- and includes mutiny in the regular Army or Air Force or any forces co-operating therewith.

43. Every person subject to naval law, who,—

Mutiny punishable with death.

- (a) joins in a mutiny; or
- (b) begins, incites, causes or conspires with any other persons to cause, a mutiny; or
- (c) endeavours to incite any person to join in a mutiny or to commit an act of mutiny; or
- (d) endeavours to seduce any person in the regular Army, Navy or Air Force from his allegiance to the Constitution or loyalty to the State or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourage such person from acting against the enemy; or
- (e) does not use his utmost exertions to suppress a mutiny; or
- (f) wilfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the State; or
- (g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or
- (h) utters words of sedition or mutiny;

shall be punished with death or such other punishment as is herein-after mentioned.

44. Every person not otherwise subject to naval law who being on board any ship or aircraft of the Indian Navy or on board any ship in the service of the Government endeavours to seduce from his allegiance to the Constitution or loyalty to the State or duty to his superior officers any person subject to naval law shall be punished Persons on board ships or aircraft seducing naval personnel from allegiance.

under this Act with death or such other punishment as is hereinafter mentioned as if he were a person subject to naval law.

Striking
superior
officers.

45. Every person subject to naval law who commits any of the following offences, that is to say,—

- (a) strikes or attempts to strike his superior officer; or
- (b) draws or lifts up any weapon against such officer; or
- (c) uses or attempts to use any violence against such officer;

shall be punished,—

if the offence is committed on active service with imprisonment for a term which may extend to ten years or such other punishment as is hereinafter mentioned; and

in any other case, with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Ill-treating
subordinates.

46. Every person subject to naval law who is guilty of ill-treating any other person subject to such law, being his subordinate in rank or position, shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

Disobedience
and insubor-
dination.

47. Every person subject to naval law, who,—

- (a) wilfully disobeys any lawful command of his superior officer; or
- (b) in the presence of his superior officer, or otherwise shows or expresses his intention to disobey a lawful command given by such superior officer; or
- (c) uses insubordinate, threatening or insulting language to his superior officer; or
- (d) behaves with contempt to his superior officer;

shall, if the offence is committed on active service or in a manner to show wilful defiance of authority, be punished with imprisonment for a term which may extend to ten years or such other punishment as is hereinafter mentioned and in other cases, be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

Quarrelling,
fighting and
disorderly
behaviour.

48. Every person subject to naval law, who,—

- (a) quarrels, fights with or strikes any other person, whether such person is or is not subject to naval law; or
- (b) uses reproachful or provoking speeches or gestures tending to make a quarrel or disturbance; or

(c) behaves in a disorderly manner;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

49. (1) Every person subject to naval law who absents himself Desertion.
5 from his ship or from the place where his duty requires him to be, with an intention of not returning to such ship or place, or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place is said to desert.

10 (2) Every person who deserts shall,—

(a) if he deserts to the enemy, be punished with death or such other punishment as is hereinafter mentioned; or

(b) if he deserts under any other circumstances, be punished
15 with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned;

and in every such case he shall forfeit all pay, head money, bounty, salvage, prize money and allowances that have been earned by him and all annuities, pensions, gratuities, medals and decorations that may have been granted to him and also all clothes and effects which
20 he may have left on board the ship or the place from which he deserted, unless the tribunal by which he is tried or the Central Government or the Chief of the Naval Staff, otherwise directs.

50. Every person subject to naval law who endeavours to seduce Inducing person to desert.
any other person subject to naval law to desert shall be punished
25 with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

51. Every person subject to naval law who without being guilty Breaking out of ship and absence without leave.
of desertion improperly leaves his ship or place of duty or is absent without leave shall be punished with imprisonment for a term which
30 may extend to two years or such other punishment as is hereinafter mentioned and shall also be punished by such mulcts of pay and allowances as may be prescribed.

52. Every person subject to naval law who is guilty of drunken- Drunkenness.
ness shall, if the offence is committed on active service, be punish-
35 ed with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned and in other cases be punished with imprisonment for a term which may extend to six months or such other punishment as is hereinafter mentioned.

Uncleanliness
or indecent
acts.

53. Every person subject to naval law who is guilty of,—

- (a) uncleanness; or
- (b) any indecent act;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned. 5

Cruelty and
conduct un-
becoming the
character of
an officer.

54. (1) Every officer subject to naval law who is guilty of cruelty shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

(2) Every officer subject to naval law who is guilty of any scandalous or fraudulent conduct or of any conduct unbecoming the character of an officer shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned. 10

Losing ship
or aircraft.

55. (1) Every person subject to naval law who designedly loses, strands or hazards or suffers to be lost, stranded or hazarded any ship of the Indian Navy or in the service of the Government, or loses or suffers to be lost any aircraft of the Indian Navy or in the service of the Government shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned. 15 20

(2) Every person subject to naval law who negligently or by any default loses, strands or hazards or suffers to be lost, stranded or hazarded any ship of the Indian Navy or in the service of the Government, or loses or suffers to be lost any aircraft of the Indian Navy or in the service of the Government shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned. 25

Offences by
officers in
charge of
convoy.

56. (1) All officers * * * appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf. 30

(2) Every such officer subject to naval law, who,—

- (a) does not defend the ships and goods under his convoy without deviation to any other objects; or
- (b) refuses to fight in their defence if they are assailed; or 35
- (c) * cowardly abandons and exposes the ships in his convoy to hazard; or
- (d) demands or exacts any money or other reward from any merchant or master for convoying any ships or vessels entrusted to his care; or 40

(e) * misuses the masters or mariners thereof:
shall be punished with death or such other punishment as is hereinafter mentioned, and shall also make such reparation in damages to the merchants, owners and others as a civil court of competent jurisdiction may adjudge.

57. Every officer subject to naval law in command of any ship of the Indian Navy who receives on board or permits to be received on board such ship any goods or merchandise whatsoever other than for the sole use of the ship or persons belonging to the ship, except
10 goods and merchandise on board any ship which may be shipwrecked or in imminent danger either on the high seas or in some port, creek, or harbour, for the purpose of preserving them for their proper owners, or except such goods or merchandise as he may at any time be ordered to take or receive on board by order of the
15 Central Government or his superior officer, shall be punished with dismissal from the naval service or such other punishment as is hereinafter mentioned.

Taking unauthorised goods on board ship.

58. Every person subject to naval law who wastefully expends or fraudulently buys, sells or receives any property of Government
20 or property belonging to a naval, military or air force mess, band or institution; and every person who knowingly permits any such wasteful expenditure, or any such fraudulent purchase, sale or receipt, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Offences in respect of property.

25 59. Every person subject to naval law who unlawfully sets fire to any dockyard, victualling yard or steam factory yard, arsenal, magazine, building, stores or to any ship, vessel, hoy, barge, boat, aircraft, or other craft or furniture thereunto belonging, not being the property of an enemy, * * * shall be punished with
30 death or such other punishment as is hereinafter mentioned.

Arson.

60. Every person subject to naval law---

Falsifying official documents and false declarations.

(a) who knowingly makes or signs a false report, return, list, certificate, book, muster or other document to be used for official purposes; or

35 (b) who commands, counsels or procures the making or signing thereof; or

(c) who aids or abets any other person in the making or signing thereof; or

40 (d) who knowingly makes, commands, counsels or procures the making of, a false or fraudulent statement or a fraudulent omission in any such document;

shall be punished with imprisonment for a term which may extend to seven years or such other punishment as is hereinafter mentioned.

Malingering,
etc.

61. Every person subject to naval law—

(a) who wilfully does any act or wilfully disobeys any orders whether in hospital or elsewhere with intent to produce or to aggravate any disease or infirmity or to delay his cure; or

(b) who feigns any disease, infirmity or inability to perform his duty;

shall be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Penalty for
endeavouring
to stir up dis-
turbance on
account of
unwhole-
someness of
victuals or
other just
grounds.

62. Every person subject to naval law who has any cause of complaint either of the unwholesomeness of the victuals or upon any other just ground shall quietly make the same known to his superior or captain or to the Chief of the Naval Staff, in accordance with the prescribed channels of communication and the said superior, captain or Chief of the Naval Staff shall, as far as he is able, cause the same to be presently remedied; and every person subject to naval law who upon any pretence whatever attempts to stir up any disturbance shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.

Offences
in respect
of papers
relating to
prize.

63. (1) All the papers, charter-parties, bills of lading, passports and other writings whatsoever that shall be taken, seized, or found abroad any * ships which are taken as prize, shall be duly preserved and the commanding officer of the ship which takes such prize shall send the originals entire and without fraud to the court of competent jurisdiction or such other court or commissioners as shall be authorised to determine whether such prize be lawful capture, there to be viewed, made use of and proceeded upon according to law.

(2) Every commanding officer who wilfully fails to send the papers, charter-parties, bills of lading, passports or other writings whatsoever that shall be taken, seized or found abroad any * * * ships which are taken as prize to the proper court or other authority shall be punished with dismissal from the naval service or such other punishment as is hereinafter mentioned and in addition shall forfeit and lose any share of the capture.

Offences
in respect of
prize.

64. Every person subject to naval law who takes out of any prize or ship seized for prize, any money, plate, or goods, unless it is necessary for the better securing thereof, or for the necessary use

and service of any ships * * of war of the Indian Navy, before the same be adjudged lawful prize in a court of competent jurisdiction, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned, and in addition shall forfeit and lose his share of the capture.

65. Every person subject to naval law who in any sort pillages, beats, or ill-treats officers, mariners or other persons on board a ship or vessel taken as prize or who unlawfully strips them of their clothes, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Offences in respect of persons on board a prize ship.

66. Every commanding officer of a ship of the Indian Navy subject to naval law, who,—

Unlawful taking or ransoming of prize.

(a) by collusion with the enemy takes as prize any vessel, goods or thing; or

(b) unlawfully agrees with any person for the ransoming of any vessel, goods or thing taken as prize; or

(c) in pursuance of any unlawful agreement for ransoming or otherwise by collusion actually quits or restores any vessel, goods or thing taken as prize;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

67. Every person subject to naval law who breaks bulk on board any vessel taken as prize, or detained in the exercise of any bel-ligerent right or under any law relating to piracy or to the slave trade or to the customs, with intent dishonestly to misappropriate anything therein or belonging thereto, shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Breaking bulk on board a prize ship.

68. Every person subject to naval law who neglects to obey or contravenes any provisions of this Act or any regulation made under this Act or any general or local order, shall, unless other punishment is provided in this Act for such neglect or contravention, be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Violation of the Act, regulations and orders.

69. Every person subject to naval law, who,—

(a) being duly summoned or ordered to attend as a witness before a court-martial wilfully or without reasonable excuse fails to attend; or

Offences in relation to court-martial.

(b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or

(c) being sworn, refuses to answer any questions which he is in law bound to answer; or

(d) refuses to produce or deliver up a document in his power which the court may legally demand; or

(e) is guilty of contempt of court-martial;

shall be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

Fraudulent entry.

70. Every person who upon entry into or offering himself to enter the naval service wilfully makes or gives any false statement whether orally or in writing to any officer or person authorised to enter or enrol seamen or others in or for such naval service, shall, if he has become subject to naval law, be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Escape from custody.

71. Every person subject to naval law who being in lawful custody escapes or attempts to escape from such custody shall be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

Failure to assist in detection of offenders

72. Every person subject to naval law, who,—

(a) does not use his utmost endeavours to detect, apprehend or bring to punishment all offenders against this Act; or

(b) does not assist the officers appointed for that purpose;

shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

Penalty for failure to attend by members of reserve forces when called up.

73. Every member of the Indian Naval Reserve Forces who, when called up for training or when called up into actual service with the Indian Navy in pursuance of the regulations made under this Act, and required by such call to join any ship or attend at any place, fails, without reasonable excuse to comply with such requirement, shall be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

Offences against good order and naval discipline.

74. Every person subject to naval law who is guilty of an act, disorder, or neglect to the prejudice of good order and naval discipline, not hereinbefore specified, shall be punished with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

Attempts.

75. Every person subject to naval law who attempts to commit any of the offences specified in sections 34 to 74 and 76 * * * * and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this Act for the punishment of such attempt, be punished,

(a) if the offence attempted to be committed is punishable with death, with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned, and

10 (b) if the offence attempted to be committed is punishable with imprisonment, with one-half of the maximum punishment * * provided for the offence or with such other punishment as is hereinafter mentioned.

76. Any person subject to naval law who abets the commission of any of the offences specified in sections 34 to 74 shall, whether the act abetted is committed or not in consequence of the abetment, and where no express provision is made by this Act for the punishment of such abetment, be punished with the punishment provided for that offence. Abetment of offences.

20 77. (1) Every person subject to naval law who commits a civil offence punishable with death or with imprisonment for life shall be punished with the punishment assigned for that offence. Civil offences.

(2) Every person subject to naval law who commits any other civil offence shall be punished either with the punishment assigned for the offence or with imprisonment for a term which may extend to three years or such other punishment as is hereinafter mentioned.

78. (1) Subject to the provisions of sub-section (2), every person subject to naval law who is charged with a naval offence or a civil offence may be tried and punished under this Act regardless of where the alleged offence was committed. Jurisdiction as to place and offences.

(2) A person subject to naval law who commits an offence of murder against a person not subject to army, naval or air force law or an offence of culpable homicide not amounting to murder against such * person or an offence of rape in relation to such * person shall not be tried and punished under this Act unless he commits any of the said offences—

(a) while on active service; or

(b) at any place outside India; or

(c) at any place specified by the Central Government by notification in this behalf.

Jurisdiction
as to time.

79. No person unless he is an offender who has avoided apprehension or fled from justice or committed the offence of desertion or fraudulent entry or the offence of mutiny * * * shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial commences within three years from the commission of such offence : 5

Provided that in the computation of the said period of three years any time during which an offender was outside India or any time during which he was a prisoner of war shall be deducted:

Provided further that no trial for an offence of desertion other than desertion on active service or * fraudulent entry shall be commenced if the person in question not being an officer has subsequently to the commission of the offence served continuously in an exemplary manner for not less than three years in the Indian Navy.

Trial after
a person
ceases to be
subject to
naval law.

80. When any offence mentioned in this Chapter has been committed by any person while subject to naval law and such person has since the commission of the offence ceased to be subject to naval law, he may be taken into and kept in custody, tried and punished under this Act for such offence in like manner as he may have been taken into and kept in custody, tried and punished if he had continued subject to naval law: 15 20

Provided that he shall not be tried for such offence except in the case of an offence of mutiny or desertion, unless the trial against him commences within six months after he has ceased to be so subject.

CHAPTER IX

25

PROVISIONS AS TO PUNISHMENTS

Punishments. 81. (1) The following punishments may be inflicted under this Act, namely:—

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term;
- (c) dismissal with disgrace from the naval service;
- (d) detention;
- (e) dismissal from the naval service;
- (f) forfeiture of seniority in rank in the case of officers;
- (g) forfeiture of time for promotion in the case of subordinate officers;
- (h) dismissal from the ship to which the offender belongs;

* * * * *

(i) disrating, in the case of subordinate and petty officers and persons holding leading rates;

(j) fine, in respect of civil offences;

(k) mulcts of pay and allowances;

(l) severe reprimand or reprimand;

5 (m) forfeiture of pay, head money, bounty, salvage, prize money and allowances earned by, and all annuities, pensions, gratuities, medals and decorations granted to, the offender or of any one or more of the above particulars; also in the case of desertion, of all clothes and effects left by the deserter in the ship to which he belongs;

10 (n) such minor punishments as are inflicted according to the custom of the navy or may from time to time be prescribed.

(2) Each of the punishments specified in sub-section (1) shall be deemed to be inferior in degree to every punishment preceding it in the above scale.

15 82. (1) The punishments that may be inflicted under this Act shall be awarded in accordance with the provisions of the following sub-sections. Provisions as to award of punishment.

(2) Except in the case of mutiny in time of war or on active service, the punishment of death shall not be inflicted on any offender
20 until the sentence has been * * * confirmed by the Central Government.

(3) The punishment of imprisonment for a term exceeding two years shall in all cases be accompanied by a sentence of dismissal with disgrace from the naval service.

25 (4) The punishment of imprisonment for a term not exceeding two years may in all cases be accompanied by a sentence of dismissal with disgrace or dismissal from the naval service;

Provided that in the case of officers, unless the sentence of dismissal with disgrace is also awarded, such sentence of imprisonment
30 shall involve dismissal from the naval service.

(5) The sentence of imprisonment may be rigorous or simple, or partly rigorous and partly simple.

(6) The sentence of dismissal with disgrace shall involve in all cases forfeiture of all pay, head money, bounty, salvage, prize
35 money and allowances that have been earned by and of all annuities, pensions, gratuities, medals and decorations that may have been granted to the offender and an incapacity to serve Government again in a defence service, or a civil service, or to hold any post connected with defence or any civil post under the Government:

40 Provided that the forfeiture of moneys shall not apply, except in the case of deserters, to moneys which should have been paid on the last pay day preceding conviction.

(7) The punishment of dismissal from the naval service shall in the case of persons who hold any lien on appointments in the regular Army or Air Force, involve dismissal from such army or air force service.

(8) The punishment of detention may be inflicted for any term 52 not exceeding two years, but no sentence of detention shall be awarded unless naval detention quarters or army or air force detention barracks are in existence.

(9) The punishment of imprisonment or detention whether on board ship or on shore shall, subject to the provisions of sub-section 10 (14), involve disrating in the case of a petty officer or a person holding a leading rate, and shall in all cases be accompanied by stoppage of pay and allowances during the term of imprisonment or detention:

Provided that where the punishment awarded is detention for a 15 term not exceeding fourteen days, the sentence may direct that the punishment shall not be accompanied by stoppage of pay and allowances during the term of detention.

(10) No officer shall be subject to detention.

(11) The punishment of forfeiture of seniority shall be imposed 20 in the substantive rank held at the date of the sentence, and shall involve a corresponding forfeiture of seniority in every higher acting rank subject always to the condition that forfeiture of seniority in any rank shall in no case exceed the seniority in that rank at the date of the sentence. 25

(12) The punishment of forfeiture of seniority shall involve the loss of the benefit of service included in the seniority forfeited for the purposes of pay, pension, gratuity, promotion and such other purposes, as may be prescribed, provided that such pay, pension, gratuity and promotion and other purposes depend upon such 30 service.

(13) The punishment of forfeiture of time for promotion shall delay the promotion by the time specified.

(14) No person shall be disrated below the limits prescribed, or lower either actually or relatively than the rating in which he 35 entered or was appointed in the naval service.

(15) Mulcts of pay and allowances shall not be awarded except as provided in sub-sections (16) and (17).

(16) Mulcts of pay and allowances shall be awarded in accordance with the regulations made under this Act on conviction of 40 offences under section 51.

(17) Mulcts of pay may also be awarded to make good any proved loss or damage occasioned by the offence on which there is a conviction, and for the offence of drunkenness by seamen.

(18) The punishment of fine may be awarded in respect of civil 5 offences in addition to, or in lieu of, other punishments specified in this Act.

(19) The forfeiture of moneys under clause (m) of sub-section (1) of section 81 shall not, except in case of desertion apply to moneys which should have been paid on the last pay day preceding 10 conviction.

(20) All other punishments authorised by this Act may be inflicted in such manner as is heretofore in use in the naval service or as may be prescribed.

(21) Subject to the provisions of the foregoing sub-sections, 15 where any punishment is specified by this Act as the penalty for an offence and it is further declared that "such other punishment as is hereinafter mentioned" may be awarded in respect of the same offence, the expression "such other punishment" shall be deemed to comprise any one or more of the punishments inferior in degree 20 to the specified punishment according to the scale of punishments laid down in sub-section (1) of section 81.

CHAPTER X

ARREST * * *

83. (1) The Chief of the Naval Staff, every officer in command 25 of a fleet or squadron of ships of the Indian Navy or of any ship of the Indian Navy or the senior officer present at a port or an officer having by virtue of sub-sections (2) and (3) of section 93 power to try offences, may, by warrant under his hand, authorise any person to arrest any offender subject to naval law for any offence triable 30 under this Act mentioned in such warrant and any such warrant may include the names of more persons than one in respect of several offences of the same nature.

Power to
issue war-
rants of
arrest.

(2) Any person named in any such warrant as aforesaid may, forthwith on his arrest, if the warrant so directs, be taken to the 35 ship of the Indian Navy to which he belongs or some other ship of the Indian Navy.

(3) A person authorised to arrest an offender may use such force as may be necessary for the purpose of effecting such arrest.

(4) Where a warrant under sub-section (1) is issued to a police 40 officer, the police officer shall take steps to execute the warrant and
903 G of I.—15.

arrest the offender in like manner as if such warrant had been issued by a magistrate of competent jurisdiction and shall, as soon as may be, deliver the person when arrested into naval custody.

Arrest with-
out warrant.

84. (1) Any person subject to naval law may be ordered without warrant into naval custody by any superior officer for any offence triable under this Act. 5

(2) A person subject to naval law may arrest without warrant any other person subject to naval law though he may be of a higher rank who in his view commits an offence punishable with death, or imprisonment for life or for a term which may extend to fourteen years. 10

(3) A provost-marshal may arrest any person subject to naval law in accordance with the provisions of section 89.

(4) It shall be lawful for the purpose of effecting arrest, or taking a person into custody, without warrant to use such force as may be necessary for the purpose. 15

Procedure
and condi-
tions of
naval
custody.

85. (1) No person subject to naval law who is arrested under this Act shall be detained in naval custody without being informed, as soon as may be, of the grounds for such arrest.

(2) Every person subject to naval law who is arrested and detained in naval custody shall be produced before his commanding officer or other officer prescribed in this behalf within a period of forty-eight hours of such arrest excluding the time necessary for the journey from the place of arrest to such commanding or other officer and no such person shall be detained in custody beyond the said period without the authority of such commanding or other officer. 20 25

Investigation
after arrest.

86. The charge made against any person subject to naval law taken into custody shall without any unnecessary delay be investigated by the proper authority and as soon as may be either proceedings shall be taken for the trial or such person shall be discharged from custody. 30

Duty to
receive or
keep in
custody.

87. (1) The commanding officer shall be responsible for the safe custody of every person who is in naval custody on board his ship or in his establishment.

(2) The officer or seaman in charge of a guard, or a provost-marshal shall receive and keep any person who is duly committed to his custody. 35

Procedure
before trial.

88. Subject to the provisions of this Act, the procedure before trial and the manner of investigation shall be as prescribed.

89. (1) Provost-marshals may be appointed by the Chief of the ^{Provost-marshals.} Naval Staff or the prescribed officer.

(2) The duties of a provost-marshal are to take charge of persons in naval custody, to preserve good order and discipline and to prevent breaches of the same by persons subject to naval law or to the law in force relating to the government of the regular Army or the Air Force.

(3) A provost-marshal may at any time arrest and detain for trial any person subject to naval law who commits, or is charged with, an offence and may also carry into effect any punishment to be inflicted in pursuance of a sentence passed under this Act, but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purpose of sub-sections (2) and (3), a provost-marshal shall be deemed to include a provost-marshal and any of his assistants appointed under the law in force relating to the government of the regular Army or the Air Force.

CHAPTER XI

20

CHARGE

90. For every distinct offence of which any person is accused, ^{Joinder of charges.} there shall be a separate charge but except as otherwise provided by regulations made under this Act all separate charges may be tried together.

91. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved ^{Acts amounting to different offences.} will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at one trial; or he may be charged in the alternative with having committed some one of the said offences.

92. The following persons may be charged and tried together, ^{Joinder of accused persons.} namely:—

(i) persons accused of the same offence committed in the course of the same transaction;

(ii) persons accused of an offence and persons accused of abetment of, or an attempt to commit, such offence; and

(iii) persons accused of different offences committed in the course of the same transaction:

Provided that in a trial by a court-martial, the trial judge advocate may, on the application made in this behalf by any accused, direct that each of the accused be tried separately by the same court-martial. 5

CHAPTER XII

AUTHORITIES HAVING POWER TO AWARD PUNISHMENTS

Power of
court-martial
and com-
manding
officers to
try offences.

93. (1) An offence triable under this Act may be tried and punished by court-martial. 10

(2) An offence not capital which is triable under this Act and which is committed by a person other than an officer (and in cases by this Act expressly provided for when committed by an officer), may, subject to * * * regulations made under this Act be summarily tried and punished by the commanding officer 15 of the ship to which the offender belongs at the time either of the commission or of the trial of the offence, subject to the restriction that the commanding officer shall not have power to award imprisonment or detention for more than three months, or to award dismissal with disgrace from the naval service: 20

Provided that no sentence of imprisonment or dismissal shall be carried into effect until approved by the prescribed authorities.

(3) The power by this section vested in a commanding officer of a ship may, subject to * * * regulations made under this Act,— 25

(a) as respects seamen on board a tender to the ship, be exercised in the case of a single tender absent from the ship, by the officer in command of such tender and in the case of two or more tenders absent from the ship in company or acting together, by the officer in immediate command of such 30 tenders;

(b) as respects seamen on board any boat * * * belonging to the ship, be exercised when such boat * * * is * * * absent on detached service by the officer in command of the boat * * * ; 35

(c) as respects seamen on detached service either on shore or otherwise, be exercised by the officer in immediate command of those persons;

(d) as respects seamen quartered in naval barracks be exercised by the officer in command of the barracks;

(e) as respects seamen attached to or serving with any body of the regular Army or the Air Force under prescribed conditions, be exercised by the commanding officer of any such body of the regular Army or the Air Force.

(4) The commanding officer of a ship or barracks may delegate the power of awarding punishments inferior in scale to dismissal, to other officers under his command in accordance with the regulations made under this Act.

94. (1) The Central Government may impose the punishment of forfeiture of time or seniority of not more than twelve months on any subordinate officer.

Power of Central Government, Chief of the Naval Staff and other officers to impose forfeiture of time or seniority.

(2) The Chief of the Naval Staff may impose the punishment of forfeiture of time or seniority of not more than six months on any subordinate officer.

(3) The commanding officer of a ship may subject to * * * regulations made under this Act, impose the punishment of forfeiture of time or seniority of not more than three months on any subordinate officer.

(4) In imposing punishments under * * * sub-sections (1) and (2), it shall not be necessary for the Central Government or the Chief of the Naval Staff, as the case may be, to hear the accused in person or by any friend or counsel.

95. When an officer is, in time of war or during active service, alleged to have been guilty of a disciplinary offence, that is to say, of a breach of sections 41, 47, 48, 49, 51, 52, 68 and 74 or of any of those sections read with sections 75 or 76, the officer having the power to order a court-martial may, if he considers the offence to be of such a character as not to necessitate trial by court-martial, in lieu of ordering a court-martial, order a disciplinary court constituted as hereinafter mentioned.

Disciplinary courts when may be constituted.

96. (1) A disciplinary court shall be composed of not less than three nor more than five officers:

Provided that the majority of the officers including the president shall be officers of the executive branch of the naval service.

Constitution and procedure of disciplinary courts.

(2) At least one of these officers composing the court shall be superior in rank to the officer under trial and in any case shall be of the rank of substantive or acting commander or of a higher rank.

(3) A disciplinary court shall have power to impose any punishment inferior to detention in the scale hereinbefore contained, but no greater punishment.

(4) The officers composing the disciplinary court shall be named by the authority ordering the same or by an officer empowered in this behalf by such authority. 5

(5) Subject to the provisions of the foregoing sub-sections, the procedure and practice of courts-martial provided by or under this Act shall apply to the procedure and practice of disciplinary courts subject to such modifications as may be prescribed. 10

Constitution
of courts-
martial.

97. (1) Courts-martial shall be constituted and convened subject to the provisions of the following sub-sections.

(2) The President, the Chief of the Naval Staff, or any officer empowered in this behalf by commission from the Chief of the Naval Staff shall have the power to order courts-martial for the trial of offences under this Act. 15

(3) Unless otherwise prescribed in respect of any specified port or station, an officer holding a commission from the Chief of the Naval Staff to order courts-martial shall not be empowered to do so if there is present at the place where such court-martial is to be held an officer superior in rank to himself and in command of one or more of the ships of the Indian Navy although such last mentioned officer may not hold a commission to order courts-martial and in such a case such last mentioned officer may order a court-martial although he does not hold a commission for the purpose. 20 25

(4) If an officer holding a commission from the Chief of the Naval Staff to order courts-martial, having the command of a fleet or squadron and being outside Indian waters die, be recalled, leave his station or be removed from his command, the officer upon whom the command of the fleet or squadron devolves and so from time to time the officer who shall have the command of the fleet or squadron, shall without any commission from the Chief of the Naval Staff have the same power to order courts-martial as the first mentioned officer was invested with. 30 35

(5) If an officer holding a commission from the Chief of the Naval Staff to order courts-martial and having the command of any fleet or squadron of the Indian Navy outside Indian waters shall detach any part of such fleet or squadron, or separate himself from any part of such fleet or squadron he may by commission under his hand empower in the first mentioned case, the commanding officer of the squadron or detachment ordered on such separate service 40

and in the case of his death or ceasing so to command, the officer to whom the command of such separate squadron or detachment shall belong, and in the second mentioned case, the senior officer of the ships of the Indian Navy on the division of the station from
5 which he is absent, to order courts-martial during the time of such separate service or during his absence from that division of the station as the case may be, and every such authority shall continue in force until revoked or until the officer holding it returns to India or until he comes into the presence of a superior officer empowered
10 ed to order courts-martial in the same squadron, detachment or division of station but so that such authority shall revive on the officer holding it ceasing to be in the presence of such a superior officer and so from time to time as often as the case so requires.

(6) A court-martial shall consist of not less than five nor more
15 than nine officers.

(7) No officer shall be qualified to sit as a member of a court-martial unless—

(a) he is subject to naval law,

(b) he is an officer of the Indian Navy of the rank of
20 lieutenant or higher rank, and

(c) he is of or over twenty-one years of age.

(8) A prosecutor shall not be qualified to sit on the court-martial for the trial of the person he prosecutes.

(9) The officer ordering the court-martial, the officer who was
25 the commanding officer of the ship to which the accused belonged at the time of the commission of the alleged offence and the officer investigating the offence shall not be qualified to sit on a court-martial for the trial of such accused.

(10) Subject to the provisions of sub-sections (7) to (9), officers
30 of the Indian Navy shall be eligible to sit as members of a court-martial irrespective of the branch of the naval service to which they belong:

Provided that—

(a) the majority of the members of the court-martial,
35 including the president, shall be officers of the executive branch of the naval service, and

(b) at trials for offences against sections 34, 35, 55 and 56, officers other than officers of the executive branch of the naval service shall not be eligible to sit.

(11) A court-martial shall not be deemed to be duly constituted unless the members thereof are drawn from at least two ships not being tenders, and commanded by officers of the rank of lieutenant or higher rank.

(12) The president of a court-martial shall be named by the authority ordering the same or by any officer empowered by such authority to name the president.

(13) No court-martial for the trial of a flag officer shall be duly constituted unless the president is a flag officer and the other officers composing the court are of the rank of captain or of higher rank.

(14) No court-martial for the trial of a captain shall be duly constituted unless the president is a captain or of higher rank and the other officers composing the court are commanders or officers of higher rank.

(15) No court-martial for the trial of a commander shall be duly constituted unless the president is a commander or of higher rank and two other members are commanders or officers of higher rank.

(16) No court-martial for the trial of a person below the rank of commander shall be duly constituted unless the president is a substantive or acting commander or of higher rank.

(17) No commander or lieutenant-commander or lieutenant shall be required to sit as a member of a court-martial when four officers of higher rank and junior to the president can be assembled at the place where the court-martial is to be held, but the regularity or validity of any court-martial or of the proceedings thereof shall not be affected by any commander, lieutenant-commander or lieutenant being required to sit or sitting thereon under any circumstances and when any commander, lieutenant-commander or lieutenant sits on any court-martial, the members of it shall not exceed five.

(18) Members of the court-martial other than the president shall be appointed, subject to the provisions of the foregoing sub-sections, in the manner provided in sub-section (19).

(19) Subject to the provisions of sub-section (11), the president shall summon all officers except such as are exempted under the provisions of sub-section (20), next in seniority to himself present at the place where the court-martial shall be held, to sit thereon until the number of nine or such other number not less than five as is attainable is complete.

(20) The officer convening the court-martial or the senior naval officer present at the place where the court-martial is to be held, may exempt by writing under his hand conveyed to the president of the court-martial any officer from attending as member on 5 ground of sickness or urgent public duty.

(21) In this section references to specified ranks of officers shall, unless otherwise stated, be deemed to be references to substantive ranks and to include references to equivalent ranks in all branches of the naval service.

10 (22) When the naval forces are on active service, officers of the Indian Naval Reserve Forces subject to naval law shall be eligible to sit as members of courts-martial on the same basis and under the same conditions as officers of the Indian Navy.

CHAPTER XIII

PROCEDURE

15

Procedure of courts-martial

98. A court-martial may be held ashore or afloat.

Where
courts-martial

99. (1) Every court-martial shall be attended by a person (in this Act referred to as the trial judge advocate) who shall be either 20 a judge advocate in the department of the Judge Advocate General of the Navy or any fit person appointed by the convening officer:

to be held.
Trial judge
advocate.

25 Provided that in the case of a court-martial for the trial of a capital offence the trial judge advocate shall be a person nominated by the Judge Advocate General of the Navy unless such trial is held outside Indian waters.

(2) The trial judge advocate shall administer oath to every witness at the trial and shall perform such other duties as are provided in this Act and as may be prescribed.

100. The place in which a court-martial is held for the purpose 30 of trying an offence under this Act shall be deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them:

Courts-mar-
tial to be
public.

35 Provided that, if the court is satisfied that it is necessary or expedient in the public interest or for the ends of justice so to do, the court may at any stage of the trial of any particular case order that the public generally or any portion thereof or any particular person shall not have access to, or be or remain in, the place in which the court is held.

40 101. (1) As soon as the court has been assembled the accused shall be brought before it and the prosecutor, the person or persons if any, defending the accused and the audience admitted.

(2) Except where the accused defends himself, he may be defended by such person or persons as may be prescribed.

(3) The trial judge advocate shall read out the warrant for assembling the court and the names of officers who are exempted from attending under sub-section (20) of section 97 together with the reasons for such exemption.

(4) The trial judge advocate shall read out the names of the officers composing the court and shall ask the prosecutor whether he objects to any of them.

(5) If the prosecutor shall have made no objection or after any objection made by the prosecutor has been disposed of, the trial judge advocate shall ask the accused if he objects to any member of the court.

Objections
to members.

102. The following provisions shall apply to the disposal of objections raised by the prosecutor as well as the accused:—

15

(a) any member may be objected to on a ground which affects his competency to act as an impartial judge; and the trial judge advocate may reject summarily without reference to the members of the court any objection not made on such ground;

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(b) objections to members shall be decided separately, those to the officer lowest in rank being taken first: provided that if the objection is to the president, such objection shall be decided first and all the other members whether objected to or not shall vote as to the disposal of the objection;

25

(c) on an objection being allowed by one-half or more of the officers entitled to decide the objection, the member objected to shall at once retire and his place shall be filled up before an objection against another member is taken up;

(d) should the president be objected to and the objection be allowed, the court shall adjourn until a new president has been appointed by the convening authority or by the officer empowered in this behalf by the convening authority; and

(e) should a member be objected to on the ground of being summoned as a witness, and should it be found that the objection has been made in good faith and that the officer is to give evidence as to facts and not merely as to character, the objection shall be allowed.

Further
objections

103. (1) The trial judge advocate shall then ask the accused whether he has any further objections to make respecting the constitution of the court; and should the accused raise any such objection, it shall then be decided by the court, which decision shall be final

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and the constitution of the court-martial shall not be afterwards impeached and it shall be deemed in all respects to have been duly constituted.

(2) If the accused should have no further objection to make to the constitution of the court or if any objection is disallowed, the members and the trial judge advocate shall then make an oath or affirmation in the form set out in section 104.

104. (1) Before the court shall proceed to try the person charged, an oath or affirmation in the following form and manner shall be administered to the president and every member of the court-martial in the order of their seniority by the trial judge advocate:—

"Ido swear in the name of God
solemnly affirm

15 that I will duly and faithfully and to the best of my ability, knowledge and judgment administer justice according to law, without fear or favour, affection or ill-will, and that I will not on any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial
20 unless thereunto required in due course of law."

(2) The trial judge advocate shall then be sworn or affirmed by the president in the following form:—

"Ido swear in the name of God
solemnly affirm

25 that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office according to law, without fear or favour, affection or ill-will, and that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court-martial unless thereunto required in due course of law."

105. (1) When the court is ready to commence the trial, the trial judge advocate shall read out the charges and shall ask the accused whether he pleads guilty or not guilty.

(2) If the accused pleads guilty, then, before such plea is recorded, the trial judge advocate shall ensure that the accused understands the charge to which he has pleaded guilty and the difference of procedure which will result from the plea of guilty.

(3) If it appears from the accused's replies or from the summary of evidence prepared in the prescribed manner that he should not plead guilty, the trial judge advocate may advise the accused to withdraw his plea.

(4) If the court accepts the plea of guilty, it shall be recorded as the finding of the court and the court shall proceed to take steps to pass sentence unless there are other charges to be tried in which event the sentence shall be deferred until after the findings on such charges are given.

5

Opening of
prosecution
case.

106. (1) If the accused pleads not guilty or refuses to, or does not, plead or if he claims to be tried or if in the circumstances mentioned in sub-section (3) of section 105 withdraws the plea of guilty or if the court does not accept the plea of guilty, the court shall proceed to try the accused.

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(2) The prosecutor shall open his case by reading the circumstantial letter prepared in accordance with the regulations made under this Act, reading from this Act or the Indian Penal Code or other law the description of the offence charged and stating shortly by what evidence he expects to prove the guilt of the accused.

45 of 1860.

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(3) The prosecutor shall then examine his witnesses.

Calling of
prosecution
witness not
in the
original list.

107. No witness whose name was not included in the original list of witnesses supplied to the trial judge advocate and the accused in accordance with regulations made under this Act shall be called by the prosecutor unless the trial judge advocate has given notice to the accused of the prosecutor's intention to call such witness and has supplied the accused with a summary of the evidence of such witness.

Swearing of
interpreter
and short-
hand writer.

108. (1) At any time during the trial, should the court think it necessary, an impartial person may be employed to serve as an interpreter and sworn or affirmed as such in the following manner:—

"Ido swear in the name of God
solemnly affirm

that I will to the best of my ability truly interpret and translate as I will be required to do touching the matter before this court-martial."

(2) During the trial, an impartial person shall be employed as a shorthand-writer and duly sworn or affirmed as such in the following manner:—

"Ido swear in the name of God
solemnly affirm

that I will truly take down to the best of my power the evidence to be given before this court-martial and such other matters as I will be required, and when required, will deliver to the court a true transcript of the same."

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109. (1) Before any person is sworn or affirmed as an interpreter or a shorthand-writer, the accused shall be asked if he objects to such person as not being impartial and the court shall decide the objection. Objection to interpreter or shorthand-writer.

5 (2) The evidence given by a witness shall be read over to him by the shorthand-writer before the witness leaves the court, if so required by the court or the witness.

110. (1) No witness shall be examined until he has been duly sworn or affirmed in the following manner:— Swearing of witnesses.

10 "I.....do swear in the name of God
solemnly affirm

that the evidence which I shall give before this court shall be the truth, the whole truth and nothing but the truth."

15 (2) Every person giving evidence on oath or affirmation before a court-martial shall be bound to state the truth.

111. (1) When the examination of the witnesses for the prosecution is concluded, the accused shall be called on for his defence. Plea of no case and defence of accused.

(2) Before entering on his defence, the accused may raise a plea of no case to answer.

20 (3) If such a plea is raised, the court will decide the plea after hearing the accused and the prosecutor and the advice of the trial judge advocate.

(4) If the court accepts the plea, the accused shall be acquitted on the charge or charges in respect whereof the plea has been
25 accepted.

(5) If the court overrules the plea, the accused shall be called upon to enter on his defence.

(6) The trial judge advocate shall then inform the accused that he may give evidence as a witness on his own behalf should he desire
30 to do so and should he make a request in writing to do so, but that he will thereby render himself liable to cross-examination.

(7) If the accused does not apply to give evidence, he may make a statement as to the facts of the case, and if he has no defence witnesses to examine as to facts, the prosecutor may sum up his case
35 and the accused shall be entitled to reply.

(8) If the accused or any one of the several accused applies to give evidence and there are no other witnesses in the case for the defence, other than witnesses as to character, then the evidence of such accused shall be recorded and if the accused so desires the
40 witnesses as to character shall be examined and the prosecutor shall then sum up his case and the accused may reply.

(9) If the accused or any one of the accused adduces any oral evidence as to facts other than his own evidence, if any, the accused may then sum up his case on the conclusion of that evidence and the prosecutor shall be entitled to reply.

Adjournment
to view.

112. (1) Whenever the court thinks that it should view the place in which the offence charged is alleged to have been committed or any other place in which any other transaction material to the trial is alleged to have occurred, the court shall make an order to that effect and may then adjourn to the place to be viewed, along with the prosecutor and the accused and the person, if any, by whom the accused is represented. 5

(2) The court on completion of the view shall adjourn and reassemble in the court room.

Summing up
by the
trial judge
advocate.

113. When the case for the defence and the prosecutor's reply, if any, are concluded, the trial judge advocate shall proceed to sum up in open court the evidence for the prosecution and the defence and lay down the law by which the court is to be guided. 15

Duties of the
trial judge
advocate.

114. (1) At all trials by courts-martial it is the duty of the trial judge advocate to decide all questions of law arising in the course of the trial, and specially all questions as to the relevancy of facts which it is proposed to prove and the admissibility of evidence or the propriety of the questions asked by or on behalf of the parties; and in his discretion to prevent the production of inadmissible evidence whether it is or is not objected to by the parties. 20

(2) Whenever in the course of a trial it appears desirable to the trial judge advocate that arguments and evidence as to the admissibility of evidence or arguments in support of an application for separate trials or on any other points of law should not be heard in the presence of the court, he may advise the president of the court accordingly and the president shall thereupon make an order for the court to retire or direct the trial judge advocate to hear the arguments in some other convenient place. 25

Duties of the
court.

115. It is the duty of the court to decide which view of the facts is true and then arrive at the finding which under such view ought to be arrived at. 35

Retirement
to consider
finding.

116. (1) After the trial judge advocate has finished his summing up, the court will be cleared to consider the finding.

(2) The trial judge advocate shall not sit with the court when the court is considering the finding, and no person shall speak to or hold any communication with the court while the court is considering the finding. 40

117. (1) When the court has considered the finding, the court shall be reassembled and the president shall inform the trial judge advocate in open court what is the finding of the court as ascertained in accordance with section 124. Announcement of the finding.

5 (2) The court shall give its findings on all the charges on which the accused is tried.

118. (1) The trial judge advocate shall then draw up the finding as announced by the court. Drawing up of the finding

10 (2) The finding so drawn up shall be signed by all the members of the court by way of attestation notwithstanding any difference of opinion there may have been among the members and shall be countersigned by the trial judge advocate.

(3) Where the finding on any charge is one of not guilty the court shall acquit the accused of that charge.

15 (4) If the accused is acquitted of all the charges, the court shall after signing the findings as provided in sub-section (2), be dissolved.

20 (5) Neither the court nor the trial judge advocate shall announce in open court whether the finding was unanimous or not; but the president shall make a record of the division of voting on each finding without disclosing the vote or opinion of any particular member of the court-martial and such record shall be communicated to the trial judge advocate for transmission to the Judge Advocate General of the Navy.

25 119. (1) If the accused is found guilty on any or all of the charges, the court before awarding punishment may call evidence as to the previous character and qualifications of the accused and in addition to any oral evidence of general character that may be adduced, shall take into consideration the following documents which shall be read by the trial judge advocate in open court:— Evidence of character and previous convictions.

30 (a) for any officer—

(i) any entries against him relating to his previous convictions in the list of officers who have been tried by court-martial; and

35 (ii) any previous entries against him in the log of the ship to which he may have belonged when the offence or offences for which he is being tried were committed and also any documents, other than such entries in the log, of the nature of a definite censure by superior authority, which log and documents the prosecution is to produce; and

40 (iii) any certificate or other documents of character which the accused may produce;

(b) for a seaman—

(i) the entries against him in the conduct and offences record sheets prior to the date of the offence charged, but subsequent to his joining his present ship, with character assessed from the previous 31st day of December to the 3 date of the offence for which he may be under trial but excluding all consideration of the latter;

(ii) his certificate of service; and

(iii) any entries against him relating to his previous convictions in the list of those who have been tried by court- 10 martial.

(2) The accused may then make a statement in mitigation of punishment and lead any evidence of character if he has not already done so before the finding.

Consideration of the sentence.

120. (1) The court shall then retire and consider and determine 15 on the punishment proper to be inflicted in conformity with the finding, and all the members of the court, whether they have voted for an acquittal or not, shall vote on the question of what punishment is proper to be awarded for the offence of which the accused has been found guilty. 20

(2) The trial judge advocate shall sit with the court while they are considering the sentence and* assist the court in the determination of the sentence but shall not vote thereon.

Announcement of the sentence.

121. (1) When the court has decided on the sentence whether unanimously or by majority, the trial judge advocate shall draw up 25 the sentence in the prescribed form which shall be signed by every member of the court by way of attestation notwithstanding any difference of opinion there may have been among the members and shall be countersigned by the trial judge advocate.

(2) The court shall then be reassembled and the accused 30 brought in and the trial judge advocate shall by direction of the court pronounce the sentence.

(3) The accused shall then be removed and the court dissolved.

Adjournment.

122. (1) A court-martial may, if it appears to the court that an adjournment is desirable, be adjourned accordingly, but except where 35 such an adjournment is ordered, shall sit from day to day with the exception of Sundays until the trial is concluded, unless prevented from so doing by stress of weather or unavoidable accident.

(2) The proceedings of a court-martial shall not, after the commencement of a trial, be delayed by the absence of a member: 40

Provided that not less than four members are present; and

Provided further that if any member is absent from any part of the trial, he shall not thereafter take any part in the proceedings.

123. (1) A court-martial assembled under this Act shall be dissolved—

Provision relating to dissolution of courts-martial.

5 (a) when the number of members comprising the court is after the commencement of a trial reduced below * * * four;

(b) by the prolonged illness of the president, trial judge advocate or the accused;

10 (c) by the death of the president or the trial judge advocate;

(d) on the making of a report under sub-section (2) of section 143.

(2) Whenever a court-martial is dissolved by virtue of sub-section (1), the accused may be retired.

15 124. (1) Subject to the provisions of sub-sections (2) and (3), every question for determination by a court-martial shall be decided by the vote of the majority:

Ascertaining the opinion of the court.

Provided that where there is an equality of votes, the decision most favourable to the accused shall prevail.

20 (2) The sentence of death shall not be passed on any offender unless four at least of the members present at the court-martial where the number does not exceed five, and in all other cases a majority of not less than two-thirds of the members present, concur in the sentence.

25 (3) Where in respect of an offence, the only punishment which may be awarded is death, a finding that a charge for such offence is proved shall not be given unless four at least of the members present at the court-martial where the number does not exceed five, and in all other cases a majority of not less than two-thirds of the 30 members present, concur in the finding.

125. Where the amount of punishment for any offence depends upon the intent with which it has been committed and any person is charged with having committed such an offence with an intent involving a greater degree of punishment, a court-martial may find 35 that the offence was committed with an intent involving less degree of punishment and award such punishment accordingly.

Finding that the offence was committed with intent involving less degree of punishment.

126. If the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might 40 have been charged under * * * section 91, he may be convicted of the offence which he is shown to have committed although he was not charged with it.

Alternative findings.

Finding
lesser offence
proved on
charge of
greater
offence.

127. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence although he was not charged with it.

5

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he was not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such an offence, although the attempt is not separately charged.

Transmission
of proceed-
ings to the
Judge Adv-
ocate General
of the Navy.

128. The trial judge advocate shall transmit in accordance with the prescribed procedure with as much expedition as may be, the original proceedings or a complete and authenticated copy thereof and the original sentence of every court-martial attended by him, to the Judge Advocate General of the Navy to be dealt with by him in accordance with the provisions of Chapter XV.

Right of
accused to
copy of
proceedings
and sen-
tence.

129. Every person tried by a court-martial and convicted shall be entitled on demand to one copy of the proceedings and sentence of such court-martial free of cost but no such demand shall be allowed after the lapse of one year from the date of the final decision of such court.

Rules as to evidence

Application
of the
Evidence
Act.

130. Subject to the provisions of this Act, the Indian Evidence Act, 1872, shall apply to all proceedings before a court-martial.

25

1 of 1872.

Accused
competent
witness for
defence.

131. A person accused of an offence before a court-martial shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

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(a) he shall not be called as a witness except on his own request in writing; or

(b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial.

Judicial
notice.

132. A court-martial may take judicial notice of any matter within the general naval, army or air force experience and knowledge of the members

133. (1) Whenever it is necessary for the purposes of either the prosecution or the defence to prove the contents of any voucher, receipt, account, muster, ship's book, letter, signal, telegram or other document made or kept in pursuance of any Act of the legislature, any regulations framed under this Act or of the custom of the service, a copy of the same purporting to be signed and certified as a correct copy by the officer for the time being commanding the ship in which the same was made or kept or by a Secretary to the Central Government, may be received as evidence of such document and of the matters, transactions and accounts therein recorded.

Presumptions
as to certain
documents.

(2) A Navy List or Gazette or other official document purporting to be published by authority of the Central Government or the Chief of the Naval Staff shall be evidence of the status and rank of officers therein mentioned and of any appointment held by such officers until the contrary is proved.

(3) Where it is shown that a person is borne on the books of a ship of the Indian Navy, such fact shall be evidence that such person is subject to naval law until the contrary is proved.

Explanation.—In this section, the term “books of a ship” shall include any official book, document or list purporting to contain the name or names of person appointed to the ship.

(4) Where any person subject to naval law is being tried on a charge of desertion, improperly leaving his ship, or absence without leave and such person has surrendered himself into custody of or has been apprehended by any person subject to naval law or by a person subject to the law relating to the government of the regular Army or the Air Force, a certificate purporting to be signed by such person and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters so stated unless the contrary is proved.

(5) Where any person subject to naval law is being tried on a charge of desertion, improperly leaving his ship, or absence without leave and such person has on arrest or surrender been taken to a police station, a certificate purporting to be signed by the officer-in-charge of the station and stating the fact, date and place of such surrender or apprehension shall be evidence of the matters stated unless the contrary is proved.

(6) Any document purporting to be a report under the hand of any chemical examiner or assistant chemical examiner to Government upon any matter or thing duly submitted to him for examination or analysis may be used as evidence in any proceeding under this Act.

(7) The statement of a naval, army or air force medical officer taken and attested by the commanding officer of a ship or establishment may be given in evidence in any proceeding under this Act:

Provided that the court may, if it thinks fit, and shall if so required by the prosecutor or the accused, summon and examine 5 such medical officer as to the subject matter of his statement.

(8) If it is proved that an offender under this Act has absconded and that there is no immediate prospect of arresting him, the commanding officer or other prescribed person may, in his absence, examine any persons who might appear to him to be acquainted with 10 the case and record their depositions on oath and any such deposition may on the arrest of such person be used in evidence against him, in any proceeding under this Act, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the cir- 15 cumstances of the case would be unreasonable.

Summoning
of witnesses.

134. (1) Every person who may be required to give evidence or produce a document before a court-martial shall be summoned in the prescribed manner in writing under the hand of the Judge Advocate General of the Navy or the trial judge advocate. 20

(2) Every person who may be required to give evidence before a commanding officer or the officer preparing a summary of evidence in accordance with the regulations made under this Act or before a board of inquiry shall be summoned in the prescribed manner by writing under the hand of the Judge Advocate General of the Navy 25 or the senior officer in the station or such other officer prescribed in this behalf.

(3) In the case of a witness subject to naval law or to the law relating to the government of the regular Army or the Air Force, the summons shall be served in the manner prescribed. 30

(4) In the case of any other witness, the summons shall be served either in the prescribed manner, or it shall be sent to the magistrate within whose jurisdiction the witness may be or resides and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate. 35

(5) When a witness is required to produce any particular document or thing in his possession or power, the summons shall describe it with reasonable precision.

(6) Every person not subject to naval law who may be summoned as aforesaid shall be allowed and paid such reasonable 40 expenses as may be prescribed.

1 of 1872.

(7) Nothing in this section shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872, or to apply to any document in the custody of the postal or telegraph authorities.

5 135. (1) Whenever in the course of a trial by court-martial, it appears to the trial judge advocate that the examination of a witness is necessary for the ends of justice and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be
10 unreasonable, the trial judge advocate may dispense with such attendance and may apply to the Judge Advocate General of the Navy to issue a commission to any district magistrate or magistrate of the first class within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Commissions for examination of witnesses.

15 (2) The trial in such an event may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

(3) The Judge Advocate General of the Navy on receipt of an application under sub-section (1) may, if he thinks fit, issue a
20 commission to the district magistrate or magistrate of the first class or an authority exercising in that place * powers equivalent to those of a magistrate of the first class under the Code of Criminal Procedure, 1898, for the examination of the witness.

5 of 1898.

(4) The magistrate or authority to whom the commission is issued
25 or if he is a district magistrate he or such magistrate of the first class as is appointed by him in this behalf shall proceed to such place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner and may for this purpose exercise the same powers as in trials of warrant
5 of 1898. 30 cases under the Code of Criminal Procedure, 1898, or of any corresponding law in force at the place where the evidence is recorded.

136. (1) Where a commission is issued under the provisions of section 135, the prosecutor and the accused may respectively forward
any interrogatories in writing which the trial judge advocate may
35 think relevant to the issue and the magistrate or authority to whom the commission is directed or to whom the duty of executing such commission has been delegated shall examine the witness upon such interrogatories.

Examination of witnesses on commission.

(2) The prosecutor and the accused may appear before such
40 magistrate or authority by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 135 has been duly executed, it shall be returned together with the deposition of the witness examined thereunder to the Judge Advocate General of the Navy who issued the commission.

(4) On receipt of the commission and the deposition returned 5 under sub-section (3), the Judge Advocate General of the Navy shall forward the same to the trial judge advocate at whose instance the commission was issued.

(5) The commission, the return thereto and the deposition shall be open to inspection by the prosecutor and the accused and may 10 subject to all just exceptions be read in evidence in the case by either the prosecutor or the accused and shall form part of the proceedings of the trial.

(6) Any deposition so taken shall be received in evidence at any subsequent stage of the trial whether before the same court or, if 15 the said court is dissolved meanwhile, before another court convened for the trial of the accused in respect of the same charges.

Power to
summon and
examine
material
witnesses.

137. (1) The trial judge advocate may, at any stage of the trial, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall and re-examine 20 any person already examined; and the trial judge advocate shall summon and examine or recall and re-examine any such person if his evidence appears to the court or to the trial judge advocate as essential to the just decision of the case.

(2) Summons to the witnesses shall be issued as provided under 25 this Act.

Compensation to aggrieved persons out of fine

Power of
court to pay
compensation
out of
fine.

138. (1) Whenever a court-martial imposes a fine as a punishment, the court may when passing judgment order the whole or any part of the fine recovered to be applied,—

30

(a) in the payment to any person aggrieved as compensation for any loss or injury caused by the offence;

(b) when any person is convicted of any civil offence which includes theft, criminal misappropriation, criminal breach of trust or cheating or of having dishonestly received or retained, 35 or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen property, in compensating any *bona fide* purchaser of the property for the loss of the same if such property is restored to the possession of the person entitled thereto.

40

(2) No such payment or compensation shall, however, be made before the expiry of fifteen days from the date of the sentence, and when a petition is presented against the conviction or sentence until the said petition is disposed of.

5 *Power of courts-martial respecting contempt, etc.*

139. When any person subject to naval law commits any offence as is described in section 69 in the presence of or in relation to a proceeding before a court-martial such court-martial may punish the offender summarily by imprisonment for a term which may extend to three months or such other less punishment as may be awarded for that offence under section 69. Summary punishment for contempt of court by person subject to naval law.

140. When any person not subject to naval law commits an offence as is described in section 165 in the presence of a court-martial, such court-martial may take such person into custody and at any time before the rising of the court on the same day, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees or in default of payment to simple imprisonment for a term which may extend to one month, unless such fine shall be sooner paid. Summary punishment for contempt of court by person not subject to naval law.

45 of 1860 141. When any such offence as is described in section 165 of this Act or section 193, section 194, section 195, section 196, section 199, section 200, section 228, section 463 or section 471 of the Indian Penal Code is committed by any person not subject to naval law in or in relation to a proceeding before a court-martial, such court-martial or the officer ordering the same if such court-martial is dissolved, may exercise the powers under section 476 of the Code of Criminal Procedure, 1898, as if it or he were a criminal court within the meaning of that section. Powers of court-martial when certain offences are committed by persons not subject to naval law.

30 142. Any trial by a court-martial or disciplinary court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the court-martial or disciplinary court shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898. Powers of courts-martial and disciplinary courts in relation to proceedings under this Act.

35 *Lunacy of accused*

143. (1) Where it appears in the course of the trial by court-martial of any person charged with an offence that such person is insane, the court shall find specially the fact of his insanity and shall order such person to be kept in strict custody in such place and in such manner as the court may deem fit until the directions of the Central Government thereupon are known. Accused found insane during trial.

(2) Every such case shall be reported by the court to the convening authority for orders of the Central Government and it shall be lawful for the Central Government to give orders for the safe custody of such person in such place and in such manner as the Central Government may deem fit.

(3) Whenever on the receipt of a report from the Central Government or otherwise the convening authority considers that such person is capable of making his defence, the convening authority may take steps to convene a court-martial for the trial of such person.

Lunacy of
the accused
at the time
of offence.

144. (1) Whenever any person subject to naval law is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall specifically state whether he committed the act or not.

(2) Whenever the finding made under sub-section (1) states that the accused person committed the act alleged, the court-martial shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be detained in safe custody in such place and in such manner as may be prescribed and shall report the action taken to the officer convening the court.

(3) The officer convening the court shall then report the case for the orders of the Central Government and shall take necessary steps to detain the said person in safe custody pending receipt of such orders.

(4) The Central Government may on receipt of a report under sub-section (3) order the accused person to be detained in a mental hospital or other suitable place of safe custody.

Disposal of property

Disposal of
property
pending
trial.

145. When any property regarding which an offence appears to have been committed or which appears to have been used for the commission of an offence is produced before a court-martial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial and if the property is subject to speedy or natural decay may after recording such evidence as it thinks necessary order it to be sold or otherwise disposed of.

Disposal of
property
regarding
which
offence is
omitted.

146. (1) When the trial before any court-martial is concluded, the court may make such order as it thinks fit for the disposal by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or docu-

ment produced before it or in its custody or regarding which an offence appears to have been committed or which has been used for the commission of any offence:

Provided that except in the case of property which is subject to speedy or natural decay such property or document shall, if so required by regulations, made under this Act, be kept in custody until the orders of the Chief of the Naval Staff are known.

(2) An order under sub-section (1) shall not be carried out for one month, unless the property is subject to speedy or natural decay.

(3) When an order under this section cannot be conveniently carried out by persons in the naval service, a copy of such order certified by the Chief of the Naval Staff or an officer prescribed in this behalf, may be sent to a magistrate within whose jurisdiction the property is for the time being situate and such magistrate shall thereupon take steps to cause the order to be carried into effect as if it were an order passed by him.

Explanation.—In this section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.

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CHAPTER XIV

EXECUTION OF SENTENCES

147. In awarding a sentence of death, a court-martial shall in its discretion direct that the offender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death.

Form of sentence of death.

148. A person sentenced to death may be detained in naval custody or may be removed to a civil prison to be kept in custody until further orders be received from the Central Government, the Chief of the Naval Staff or the officer ordering the court-martial by which he was sentenced to death or other prescribed officer and the order in the prescribed form of the Central Government, the Chief of the Naval Staff or the convening authority or such officer shall be sufficient warrant for detaining the person in custody.

Interim custody until execution of sentence of death.

149. (1) When a sentence of death is to be executed, the Chief of the Naval Staff or the convening authority or the prescribed officer shall give directions as to the time, place and manner in which such sentence is to be carried out and the order of such officer or authority in the prescribed form shall be sufficient warrant for the execution of such sentence.

Execution of sentences of death.

(2) There shall be attached to the prescribed form an order of the Central Government certifying the confirmation of the sentence by the Central Government in all cases where such confirmation is necessary; and where such confirmation is not necessary, a certificate of the Chief of the Naval Staff or other prescribed officer stating 5 that such confirmation is not necessary.

Place of
imprison-
ment and
detention.

150. (1) Every term of imprisonment whether imprisonment was awarded as an original or commuted punishment may be served * in a naval prison, naval detention quarters or in any civil prison, house of correction or military or air force prison or deten- 10 tion barracks.

(2) Every term of detention whether the detention was awarded as an original or commuted punishment may be served in any naval detention quarters or army or air force detention barracks.

(3) Where in pursuance of this Act, a person is sentenced to im- 15 prisonment or detention or has his sentence commuted to imprisonment or detention, the order in the prescribed form of the Central Government or the Chief of the Naval Staff or the officer ordering the court-martial by which such person was sentenced or the senior officer present in port or, if he was sentenced by the com- 20 manding officer of a ship, or other officer empowered under this Act to exercise like powers, the order in the prescribed form of such commanding officer or other officer, shall be a sufficient warrant for the sending of such person to the place of imprisonment or detention, as the case may be, there to undergo the sentence 25 according to law, or until he reaches such place of imprisonment or detention for detaining him in naval custody or in the case of a person sentenced to imprisonment, in any civil prison or place of confinement.

Commence-
ment of
sentence

151. (1) Subject to the provisions of sub-section (2), every term 30 of imprisonment or detention awarded in pursuance of this Act shall be reckoned as commencing on the day on which the sentence was awarded.

(2) Where by reason of a ship being at sea or off a place at which there is no proper prison or naval detention quarters, a sentence of 35 imprisonment or detention, as the case may be, cannot be duly executed, then subject as hereinafter mentioned, an offender under the sentence of imprisonment or detention, as the case may be, may be sent with all reasonable speed to some place at which there is a proper prison or naval detention quarters or in the case of an 40 offender under sentence of detention to some place at which there are some naval detention quarters in which the sentence can be duly executed; and on arrival there, the offender shall undergo his sentence in like manner as if the date of such arrival were the

day on which the sentence was awarded and notwithstanding that in the meanwhile he has returned to his duty or become entitled to his discharge; and the term of imprisonment or detention, as the case may be, shall be reckoned accordingly, subject however to the deduction of any time during which he has been kept in confinement in respect of the said offence.

152. Whenever a sentence shall be passed by a court-martial on an offender already under sentence either of detention or imprisonment passed upon him under this Act for a former offence, the court may award a sentence of detention or imprisonment for the offence for which he is under trial to commence at the expiration of the sentence of detention or imprisonment to which he has been previously sentenced:

Imprisonment of offender already under sentence.

Provided that so much of any term of detention imposed on a person by a sentence in pursuance of this section as will prolong the total term of detention beyond two years shall be deemed to be remitted.

153. Whenever it is deemed expedient, it shall be lawful for the Central Government, the Chief of the Naval Staff or senior officer present, by an order in writing in the prescribed form, from time to time to change the place of confinement of any offender imprisoned or sentenced to be imprisoned or detained in pursuance of this Act or of any offender undergoing or sentenced to undergo detention; and the gaoler or other person having the custody of such offender shall immediately on the receipt of such order remove such offender to the gaol, prison or house of correction or, in the case of an offender undergoing or sentenced to undergo detention, to the naval detention quarters mentioned in the said order, or shall deliver him over to naval custody for the purpose of the offender being removed to such prison or naval detention quarters, and every gaoler or keeper of such last-mentioned prison, gaol, or house of correction or naval detention quarters shall, upon being furnished with such order of removal, receive into his custody and shall confine pursuant to such sentence or order every such offender.

Change of place of confinement.

154. Whenever any offender is undergoing imprisonment or detention in pursuance of this Act, it shall be lawful for the Central Government or the Chief of the Naval Staff, or where an offender is undergoing imprisonment or detention by order of his commanding officer, for such commanding officer or the Central Government or the Chief of the Naval Staff, to give an order in writing in the prescribed form directing that the offender be discharged; and it shall also be lawful for the Central Government and the Chief of the Naval Staff, by order in writing in the prescribed form, to direct that any such offender be delivered over to naval custody for the purpose of being brought before a court-martial, either as a witness or for trial or otherwise, and such offender shall accordingly, on the

Discharge or removal of prisoners.

production of any such order, be discharged, or be delivered over to such custody.

Time of
detention
in naval
custody.

155. The time during which any offender under sentence of imprisonment or detention is detained in naval custody shall be reckoned as imprisonment or detention under his sentence for what-
ever purpose he is so detained; and the governor, gaoler, keeper or
superintendent who shall deliver over any such offender shall again
receive him from naval custody, so that he may undergo the re-
mainder of his punishment.

Removal
of insane
prisoners.

156. If any person imprisoned or undergoing detention by virtue
of this Act shall become insane, and a certificate to that effect shall
be given by two physicians or surgeons, the Central Government
shall, by warrant in the prescribed form, direct the removal of such
person to such * * asylum or other proper receptacle for insane
persons in India as it may judge proper for the unexpired term of
his imprisonment or detention; and if any such person shall in the
same manner be certified to be again of sound mind, the Central
Government may issue a warrant in the prescribed form for his
being removed to such prison or place of confinement or in the
case of a person sentenced to detention, such naval detention
quarters as may be deemed expedient, to undergo the remainder
of his punishment, and every gaoler or keeper of any prison, gaol,
or house of correction shall receive him accordingly.

Naval pri-
sons and
naval deten-
tion quarters.

157. The Central Government may set apart any buildings or
vessels or any parts thereof as naval prisons or naval detention
quarters and any buildings, vessels or parts of buildings or vessels
so set apart as naval prisons or naval detention quarters, as the
case may be, shall be deemed to be naval prisons or naval detention
quarters respectively within the meaning of this Act.

Execution of
sentence of
fine.

158. When a sentence of fine is imposed under this Act by a
court-martial or disciplinary court, the officer ordering the court-
martial or disciplinary court may transmit a copy of the order
imposing the fine duly certified under his hand to any magistrate
in India, and such magistrate shall thereupon cause the fine to be
recovered in accordance with the provisions of the Code of Criminal
Procedure, 1898, or any law corresponding thereto in force in the
State of Jammu and Kashmir as if it were a sentence of fine impos-
ed by such magistrate.

Power to
make regu-
lations in
respect of
naval prisons
and deten-
tion quarters.

159. (1) The Central Government may, by notification in the
Official Gazette, make regulations providing,—

(a) for the government, management and regulation of
naval prisons and detention quarters;

(b) for the appointment and removal and powers of
inspectors, visitors and officers thereof;

5 of 1898.

(c) for the food, bedding and clothing of prisoners or persons undergoing detention therein;

(d) for the labour of such prisoners or persons * * * therein and for enabling such prisoners or persons to earn by special industry and good conduct remission of a portion of their sentence; and

(e) for the care of such prisoners or persons, their safe custody and the maintenance of good order and discipline among them and the punishment by personal correction, restraint or otherwise of offences committed by such prisoners or persons.

9 of 1894.

(2) The regulations to be made under this section may apply to naval prisons or detention quarters any of the provisions of the Prisons Act, 1894, and rules made thereunder, imposing punishments on any persons not being prisoners or relating to the duties of gaolers, medical officers and other officers of the prisons.

(3) The regulations to be made under this section shall not authorise corporal punishment to be inflicted for any offence.

CHAPTER XV

JUDICIAL REVIEW OF COURTS-MARTIAL PROCEEDINGS

20 160. (1) All proceedings of trials by court-martial or by disciplinary courts shall be reviewed by the Judge Advocate General of the Navy either on his own motion or on application made to him within the prescribed time by any person aggrieved by any sentence or finding, and the Judge Advocate General of the Navy shall transmit
25 the report of such review together with such recommendations as may appear just and proper to the Chief of the Naval Staff for his consideration and for such action as the Chief of the Naval Staff may think fit.

Judicial review by the Judge Advocate General of the Navy.

(2) Where any person aggrieved has made an application under
30 sub-section (1), the Judge Advocate General of the Navy may, if the circumstances of the case so require, give him an opportunity of being heard either in person or through a legal practitioner or an officer of the Indian Navy.

35 161. (1) On receipt of the report and recommendations if any, under section 160, the Chief of the Naval Staff shall in all cases of capital sentence and in all cases where the court-martial is ordered by the President, and may in other cases transmit the proceedings and the report to the Central Government together with such recommendations as he may deem fit to make.

Consideration by the Chief of the Naval Staff.

(2) Nothing in section 160 or this section shall authorise the Judge Advocate General of the Navy or the Chief of the Naval Staff to make any recommendation for setting aside, or the Central Government to set aside, an order of acquittal passed under this Act.

CHAPTER XVI

5

MODIFICATIONS OF FINDINGS AND SENTENCES, PARDONS AND COMMUTATION, REMISSION AND SUSPENSION OF SENTENCES

162. Any person subject to naval law who considers himself aggrieved by a finding or sentence of any court-martial may present a petition to the Central Government or to the Chief of the Naval Staff, and the Central Government or the Chief of the Naval Staff, as the case may be, may pass such order thereon as may be thought fit.

Petitions to the Central Government or Chief of the Naval Staff against findings or sentences.

Powers of Central Government and the Chief of the Naval Staff in respect of findings and sentences.

163. (1) Where any person is tried under the provisions of this Act, the Central Government or the Chief of the Naval Staff, may, in the case of a conviction,—

(a) set aside the finding and sentence and acquit or discharge the accused or order him to be retried, or

(b) alter the finding, maintaining the sentence (provided that such sentence may be legally passed on the altered finding), or

(c) with or without altering the finding, reduce the sentence or commute the punishment awarded for any punishment inferior in scale, or

(d) either with or without conditions, pardon the person or remit the whole or any part of the punishment awarded, or

(e) either with or without conditions, release the person on parole:

Provided that a sentence of imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of imprisonment awarded, and a sentence of dismissal with disgrace not accompanied by a sentence of imprisonment shall not be commuted for a sentence of detention:

Provided further that nothing in this section shall authorise the Central Government or the Chief of the Naval Staff to enhance the sentence.

(2) Any sentence modified under the provisions of sub-section (1) shall be carried into execution as if it had been originally passed.

(3) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is in the opinion of the authority which granted the pardon, release or remission not

fulfilled, such authority may cancel the pardon or release or remission and thereupon the sentence awarded shall be carried into effect as if such pardon, release or remission had not been granted:

Provided that in the case of a person sentenced to imprisonment or detention such person shall undergo only the unexpired portion of the sentence.

* * * * *

164. (1) Where a person has been sentenced to imprisonment or detention, the Central Government or the officer who by virtue of the foregoing section or sub-section (3) of section 150 has power to issue an order of committal (hereinafter in this section referred to as "the committing authority") may, in lieu of issuing such an order, order that the sentence be suspended until an order of committal is issued, and in such case—

(a) notwithstanding anything in this Act, the term of the sentence shall not be reckoned as commencing until an order of committal is issued;

(b) the case may at any time, and shall at intervals of not more than three months, be reconsidered by the Central Government or committing authority or the prescribed officer, and if on any such reconsideration it appears to the Central Government or committing authority or such prescribed officer that the conduct of the offender since his conviction has been such as to justify a remission of the sentence, the Central Government or committing authority or such prescribed officer shall remit the whole or any part of it;

(c) subject to regulations made under this Act, the Central Government or the committing authority or such prescribed officer may at any time whilst the sentence is suspended issue an order of committal and thereupon the sentence shall cease to be suspended;

(d) where a person subject to naval law, whilst a sentence on him is so suspended, is sentenced to imprisonment or detention for any other offence then, if he is at any time committed either under the suspended sentence or under any such subsequent sentence, and whether or not any such subsequent sentence has also been suspended, the committing authority may direct that the two sentences shall run either concurrently or consecutively, so, however, as not to cause a person to undergo detention for a period exceeding the aggregate of two consecutive years.

(2) When a person has been sentenced to imprisonment or detention and an order of committal has been issued, the Central Government or the committing authority, or prescribed officer may order the sentence to be suspended, and in such cases the person

whose sentence is suspended shall be discharged and the currency of the sentence shall be suspended until he is again committed under the same sentence, and the provisions of clauses (b), (c) and (d) of sub-section (1) shall apply in like manner as in the case where a sentence has been suspended before an order of committal has been issued.

(3) Where a sentence is suspended under this section, whether before or after committal, the Central Government or, subject to regulations made under this Act, the committing authority or officer by whom the sentence is suspended may, direct that any penalty which is involved by the punishment of imprisonment or detention either shall be or shall not be remitted or suspended.

CHAPTER XVII

OFFENCES IN RELATION TO COURTS-MARTIAL, DISCIPLINARY COURTS AND PRISONS

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Offences by persons not subject to naval law in relation to courts-martial and disciplinary courts

165. Every person not subject to naval law, who,—

(a) being duly summoned or ordered to attend as a witness before a court-martial or disciplinary court fails to attend without due cause, or

(b) refuses to take an oath or make an affirmation legally required by a court-martial or disciplinary court to be taken or made, or

(c) being sworn or affirmed, refuses to answer any questions put by or before a court-martial or disciplinary court, which he is in law bound to answer, or

(d) refuses to produce or deliver up a document in his power which the court-martial or disciplinary court may legally demand, or

(e) is guilty of contempt of court-martial or disciplinary court,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalties for aiding escape or attempt to escape of prisoners and for breach of prison regulations.

166. (1) Every person, who,—

(a) conveys or causes to be conveyed into any naval prison or naval detention quarters any arms, tools, or instruments, or any mask or other disguise to facilitate the escape of any prisoner or person undergoing detention, or

(b) by any means whatever aids any prisoner or person undergoing detention to escape or in an attempt to escape from such prison or naval detention quarters, whether an escape be actually made or not,

shall be punished with imprisonment for a term which may extend to fourteen years.

(2) Every person who brings or attempts to bring into a naval prison or naval detention quarters, in contravention of regulations

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made under this Act, any spirituous or fermented liquor, shall for every such offence be punished with a fine not exceeding two hundred rupees and not less than one hundred rupees.

(3) Every person, who,—

5 (a) brings into a naval prison or naval detention quarters or to or for any prisoner or person undergoing detention, without the knowledge of the officer having charge or command thereof, any money, clothing, provisions, tobacco, letters, papers, or other articles not allowed by the rules of the prison or naval
10 detention quarters, to be in the possession of a prisoner or person undergoing detention, or

(b) throws into the said prison or naval detention quarters, any such articles, or by desire of any prisoner or person undergoing detention, without the sanction of the said officer carries
15 out of the prison or naval detention quarters any of the articles aforesaid,

shall for every such offence be punished with a fine not exceeding two hundred rupees.

(4) Every person, who,—

20 (a) interrupts any officer of a naval prison or naval detention quarters in the execution of his duty, or

(b) aids or abets any person to assault, resist, or interrupt any such officer,

shall for every such offence be punished with imprisonment which
25 may extend to two years, or with fine, or both.

(5) Every fine recovered under the foregoing sub-sections of this section shall be applied as the Central Government may direct notwithstanding any law, charter, or custom to the contrary.

167. Every governor, gaoler, and keeper of any prison, gaol, or
30 house of correction or of any naval detention quarters, and every person having the charge or command of any place, ship, or vessel for imprisonment, who shall without lawful excuse, refuse or neglect to receive or confine, remove, discharge, or deliver up any offender against the provisions of this Act, or any of them, shall incur for
35 every such refusal or neglect a penalty not exceeding one thousand rupees and every such penalty shall be applied as the Central Government may direct notwithstanding any law, charter, or custom to the contrary.

Penalty as regards gaolers, etc.

CHAPTER XVIII

40 JUDGE ADVOCATE GENERAL OF THE NAVY AND OFFICERS OF HIS DEPARTMENT

168. (1) There shall be appointed by the Central Government a
Judge Advocate General of the Navy and as many judge advocates
in the department of the Judge Advocate General of the Navy as the
45 Central Government may deem necessary.

Appointment of the Judge Advocate General of the Navy and his subordinate officers.

(2) Out of the judge advocates so appointed, the Central Government may designate any one to be the Deputy Judge Advocate General of the Navy.

(3) A person shall not be qualified for appointment as Judge Advocate General of the Navy unless he—

(a) is a citizen of India, and

(b) has for at least ten years held a judicial office in the territory of India, or

(c) has for at least ten years been an advocate of a High Court or two or more such courts in succession.

(4) A person shall not be qualified for appointment as Deputy Judge Advocate General of the Navy unless he—

(a) is a citizen of India, and

(b) has for at least seven years held a judicial office in the territory of India, or

(c) has for at least seven years been an advocate of a High Court or two or more such courts in succession.

(5) A person shall not be qualified for appointment as a judge advocate unless he—

(a) is a citizen of India, and

(b) is qualified for enrolment as an advocate or a pleader of a High Court.

Explanation.—For the purposes of this section,—

(a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of the Constitution during which he has held judicial office in any area which was comprised before the 15th day of August, 1947, within India as defined in the Government of India Act, 1935, or has practised as an advocate of any High Court in any such area as the case may be;

(c) the expression “judicial office” shall be deemed to include the office of the Judge Advocate of the Fleet or any of his deputies or assistants and any other legal or judicial office in the department of the Judge Advocate of the Fleet held before the commencement of this Act, and the office of the Judge Advocate General of the Navy or of a judge advocate held after the commencement of this Act.

169. * It shall be the duty of the Judge Advocate General of the Navy to perform such duties of a legal and judicial character pertaining to the Indian Navy as may from time to time be referred or assigned to him by the Central Government or the Chief of the Naval Staff, and to discharge the functions conferred on him by or under this Act or any other law for the time being in force.

Functions of the Judge Advocate General of the Navy.

170. The functions of the Judge Advocate General of the Navy shall in his absence on leave or otherwise, be performed by such one of the judge advocates in his department as may be designated in this behalf by the Chief of the Naval Staff.

Discharge of functions of the Judge Advocate General of the Navy in his absence.

CHAPTER XIX

DISPOSAL OF THE PRIVATE PROPERTY OF PERSONS DECEASED, MISSING, ETC.

171. (1) On the death of a seaman while subject to naval law, the commanding officer of the ship to which the seaman belonged shall as soon as may be,—

Disposal of property of deceased seaman.

(a) secure all movable property belonging to the deceased that is in the ship or quarters and cause an inventory thereof to be made;

(b) draw the pay and allowances due to such persons;

(c) if he thinks fit, and subject to any regulations made in this behalf, collect all moneys left by the deceased in any banking company, including any post office savings bank, co-operative bank or society, or any other institution receiving deposits in money however named, and for that purpose may require the agent, manager or other proper authority of such banking company, society or other institution to pay the moneys to the commanding officer forthwith, notwithstanding anything in the rules of the banking company, society or institution; and such agent, manager or other authority shall, notwithstanding anything contained in any other law, be bound to comply with the requisition.

(2) Where any money has been paid by the banking company, society or other institution in compliance with the requisition under clause (c) of sub-section (1), no person shall have any claim against the said banking company, society or other institution in respect of such money.

(3) The commanding officer shall, if in his opinion it is necessary for the purpose of securing the payment of the ship and service debts and other debts in the ship or quarters of the deceased and the expenses, if any, incurred by the commanding officer in respect of

the estate of the deceased, cause the movable property of the deceased to be sold or converted into money.

(4) If the representative of the deceased is on the spot and either pays or gives security for the payment of the ship and service debts and other debts in ship or quarters due from the deceased, the commanding officer shall not take action under clause (c) of sub-section (1) or under sub-section (3).

(5) The commanding officer shall, out of the moneys so received, collected or realised under sub-sections (1) and (3), pay the ship and service debts and other debts in ship or quarters of the deceased, and the expenses incurred in connection with the realisation of the assets of the deceased.

(6) Any property left over after meeting the expenditure indicated in sub-section (5), or where the representative had paid or given security for the payment of the ship and service debts and other debts in ship or quarters the entire property of the deceased, shall be delivered over by the commanding officer to the representative of the deceased, whereupon his responsibility for the administration of the estate of the deceased shall cease.

(7) If no claim is made in respect of the said surplus by a representative of the deceased within twelve months of the death, the commanding officer shall take steps to hand over the property to the prescribed person who shall continue the administration of the estate of the deceased as provided for in section 176.

Disposal of property of deceased officers.

172. The provisions of section 171 shall also apply to the disposal of the property of an officer who dies while subject to naval law, but with the following modifications, namely:—

(i) the functions of the commanding officer under section 171 shall be performed by a Committee of Adjustment constituted in this behalf in the prescribed manner; and

(ii) the surplus, if any, after the payment of debts and expenses specified in sub-section (3) of section 171 shall be paid to the person prescribed in this behalf.

Decision of questions as to ship and service debts and other debts in ship or quarters.

173. If in any case a doubt or difference arises as to what are the ship or service debts and the debts in ship or quarters of a deceased officer or seaman or as to the amount payable in respect thereof, the decision of the prescribed person shall be final and shall be binding on all persons for all purposes.

Nature of the powers of commanding officer or Committee of Adjustment.

174. For the purpose of the exercise of his or its duties under section 171 or 172, as the case may be, the commanding officer or the Committee of Adjustment, as the case may be, shall, to the exclusion of all other persons and authorities have the same rights and powers

as if the commanding officer or the Committee had taken out representation to the estate of the deceased, and any receipt given by such commanding officer or the Committee, as the case may be, shall have effect accordingly.

5 *Explanation.*—"Representation" includes probate, letters of administration with or without the will annexed and a succession certificate issued by a court of competent jurisdiction constituting a person executor or administrator of the estate of the deceased person or authorising him to receive or realise the assets of a deceased
10 person.

3 of 1913.

175. (1) Notwithstanding anything contained in the Administrator-General's Act, 1913, an Administrator-General shall not interpose in any manner in relation to any property of a deceased which has been dealt with under * * * section 171 or section 172
15 except in so far as he is expressly required or competent to do so by or under the provisions of this Act.

Powers of Central Government to hand over estate of deceased persons to the Administrator-General

(2) The Central Government may, at any time and in such circumstances as it thinks fit, direct that the estate of a deceased seaman or officer shall be handed over by the commanding officer or the
20 Committee of Adjustment, as the case may be, to the Administrator-General of a State for administration and thereupon such commanding officer or the Committee shall make over the estate to such Administrator-General.

3 of 1913.

(3) Where under this section any estate is handed over to the
25 Administrator-General, the latter shall administer such estate in accordance with the provisions of the Administrator-General's Act, 1913: * * * * *

Provided that where the estate is handed over to the Administrator-General before the ship and service debts and other debts
30 in ship or quarters of the deceased are paid, it shall be the duty of the Administrator-General to pay these debts in priority to any other debts due by the deceased.

(4) The Administrator-General shall pay the surplus, if any, remaining in his hands after discharging all debts and charges, to the
35 heirs of the deceased and if no heir is traceable, shall make over the surplus to the person prescribed in this behalf.

(5) The Administrator-General shall not charge in respect of his duties under this section any fee exceeding three per cent. of the total amount coming to or remaining in his hands after payment of
40 the ship and service debts and the other debts in ship or quarters.

Disposal of surplus by prescribed persons. 176. On receipt of the surplus referred to in sub-section (7) of section 171 or clause (ii) of section 172 or sub-section (4) of section 175, the prescribed person shall,—

(a) if he knows of a legal representative of the deceased, pay the surplus to that representative; 5

(b) if the surplus does not exceed five thousand rupees in value, the prescribed person may, if he thinks fit, pay or deliver to any person appearing to him to be entitled to receive the same, without requiring such person to produce any probate, letters of administration, succession certificate or other conclusive evidence of title; 10

(c) if the prescribed person does not know of any such representative to whom the surplus could be paid under clause (a), or if the surplus has not been disposed of under clause (b), publish every year a notice in the prescribed form and manner for six consecutive years; and if no claim to the surplus is made by the legal representative of the deceased within six months even after the publication of the last of such notices, the prescribed person shall deposit the surplus together with any income or accumulation of income accrued therefrom, to the credit of the Central Government: 20

Provided that such deposit shall not prejudice the claims of any person to such surplus or any part thereof, if he is otherwise entitled to it.

Disposal of effect not converted into money. 177. Where any part of the estate of a deceased officer or seaman consists of effects, securities or other property not converted into money, the provisions of sub-section (7) of section 171 or clause (ii) of section 172 and section 176 with respect to the payment of the surplus shall, save as may be prescribed, extend to the delivery, transmission or transfer of such effects, securities or property, and the prescribed person shall have the same power of converting the same into money as a legal representative of the deceased. 25 30

Termination of liability of commanding officer, Committee, prescribed person and the Central Government. 178. Any payment or application of money or * * delivery, sale or other disposition of any property made, or purported to be made by the commanding officer, the Committee or the prescribed person in good faith in pursuance of sections 171 to 176 shall be valid and shall fully absolve the commanding officer, the Committee or the prescribed person, as the case may be, as well as the Central Government from all liability in respect of the money or property so paid, applied or disposed of; but nothing herein contained shall be deemed to affect the right of any executor, administrator or other legal representative or of any creditor of the deceased against any person to whom any such payment or delivery as aforesaid has been made. 35 40

179. Nothing in this Chapter shall affect the rights and duties of the representative of a deceased seaman or officer or any Administrator-General, in respect of the property of such deceased seaman or officer not collected by the commanding officer or the Committee, as the case may be, and not forming part of the surplus handed over to the prescribed person either under sub-section (7) of section 171 or clause (ii) of section 172.

Saving of rights of representative.

180. The provisions of sections 171 to 179 shall, so far as they can be made applicable, also apply in the case of an officer or seaman subject to naval law who is ascertained in the prescribed manner to be of unsound mind notwithstanding anything contained in the Indian Lunacy Act, 1912, or who, while on active service, is officially reported missing, as if the said officer or seaman had died on the day on which his unsoundness of mind is so ascertained or, as the case may be, on the day on which he is officially reported missing:

Application of sections 171 to 179 to persons of unsound mind.

4 of 1912.

Provided that in the case of an officer or seaman so reported missing, no action shall be taken to dispose of the property under sections 171, 172 and 175 until such time as a certificate under the regulations made under this Act is issued by or under the authority of the Chief of the Naval Staff or other prescribed person that he is confirmed or presumed to be dead.

181. When an officer while subject to naval law dies or is ascertained in the prescribed manner to be of unsound mind or while on active service is officially reported missing, the reference in the foregoing provisions of this Chapter to the Committee shall be construed as references to the Standing Committee of Adjustment, if any, constituted in this behalf in the prescribed manner and such Standing Committee, if constituted, shall alone be entitled to perform all the functions of such Committee unless otherwise directed by the Chief of the Naval Staff.

Appointment of Standing Committee of Adjustment in certain cases.

182. The functions and powers of the commanding officer in this Chapter may in any case be performed or exercised by any other person appointed in this behalf by the Chief of the Naval Staff.

Exercise of powers by other persons.

183. If any person subject to naval law is absent without leave for a period of one month (whether he is guilty of desertion or of improperly leaving his ship or place of duty or not) but is not apprehended or tried for his offence, he shall be liable for forfeiture of pay and allowances and other benefits as the Central Government from time to time by regulations provide, and the Central Government, the Chief of the Naval Staff or the prescribed officer may by an order containing a statement of the absence without leave direct that the clothes and effects, if any, left by him on board ship or

Forfeiture of effects for absence without leave.

at his place of duty be forfeited, and the same be sold and the proceeds of the same shall be disposed of as provided in the regulations made under this Act; and every order under this provision for forfeiture or sale shall be conclusive for the purpose of this section as to the fact of the absence without leave as therein stated of the 5 person therein named; but in any case the Central Government may, if it deems fit on sufficient cause being shown at any time after forfeiture and before sale, remit the forfeiture, or after sale pay or dispose of the proceeds of the sale or any part thereof to or for the 10 use of the person to whom the clothes or effects belonged, or his representatives.

CHAPTER XX

REGULATIONS

Power to¹
make regula-
tions.

184. (1) The Central Government may, by notification in the Official Gazette, make regulations for the governance, command, 15 discipline, recruitment, conditions of service and regulation of the naval forces and generally for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for— 20

(a) the rank, precedence, powers of command and authority of officers and seamen in the naval service;

(b) the relative rank, precedence, powers of command and authority of officers and seamen in the naval service in relation to members of the regular Army and the Air Force; 25

(c) the retirement and discharge of persons in the naval service;

(d) the convening and constitution of courts-martial and the appointment of prosecutors at trials by court-martial;

(e) the adjournment, dissolution and sittings of courts- 30 martial;

(f) the procedure to be observed in trials by courts-martial, the persons by whom an accused may be defended in such trials and the appearance of such persons thereat;

(g) the forms of orders to be made under the provisions of 35 this Act relating to courts-martial and the awards and infliction of death, imprisonment and detention;

(h) the carrying into effect of sentences of courts-martial;

(i) any matter necessary for the purpose of carrying this Act into execution as far as it relates to the investigation, arrest, custody, trial and punishment of offences triable or punishable under this Act;

5 (j) the terms and conditions of service, the pay, pensions, allowances and other benefits of persons in the naval service, including special provision in this behalf during active service;

(k) the ceremonials to be observed and marks of respect to be paid in the naval service;

10 (l) the convening of, the constitution, procedure and practice of boards of inquiry, * * the summoning of witnesses before them and the administration of oaths by such boards;

(m) the computation of time of absence without leave or custody of deserters and absentees without leave;

15 (n) any matter relating to the realisation and disposal of the estates of officers or seamen who are deceased, ascertained to be of unsound mind or reported missing on active service;

(o) the enquiry into the conduct of prisoners of war, and their pay and allowances;

20 (p) the provision to be made for the wives and children of prisoners of war or missing persons;

(q) the procedure relating to the exercise of powers under section 163;

25 (r) any other matter which is to be, may be, or is required to be, prescribed under this Act.

185. All regulations made under this Act shall, as soon as may be after they are made, be laid for not less than thirty days before each House of Parliament and shall be subject to such modifications as Parliament may make during the session in which they are so
30 laid or the session immediately following.

Regulations
to be placed
before
Parliament

CHAPTER XXI

REPEALS AND SAVINGS

34 of 1934.

186. The Indian Navy (Discipline) Act, 1934, the Indian Naval Reserve Forces (Discipline) Act, 1939, and the Naval Forces (Miscellaneous Provisions) Act, 1950, are hereby repealed.

57 of 1950.

35

187. (1) The Indian Navy in existence at the commencement of this Act shall be deemed to be the regular naval force raised under this Act.

Repeals.

Provisions as
to existing
naval force
appoint-
ments, etc.

(2) The Indian Naval Reserve, the Indian Naval Volunteer Reserve and the Indian Fleet Reserve in existence at the commencement of this Act shall be deemed to be the Indian Naval Reserve Forces raised under this Act.

(3) Officers in the Indian Navy or the Indian Naval Reserve Forces at the commencement of this Act shall be deemed to have been appointed as such under this Act.

(4) The person holding office as Judge Advocate of the Fleet at the commencement of this Act shall, on such commencement, be deemed to have been appointed as the Judge Advocate General of the Navy under this Act.

(5) Seamen in the Indian Navy or in the Indian Naval Reserve Forces at the commencement of this Act shall be deemed to have been duly enrolled as such under this Act.

CHAPTER XXII

15

TRANSITORY PROVISIONS

Powers of
officers of
the Royal
Navy.

188. (1) An officer of the Royal Navy attached to or serving with the Indian Navy shall have and exercise all such powers as are vested in or may be exercised by an officer of the Indian Navy of corresponding rank or holding a corresponding appointment and shall be eligible to be granted a commission to convene courts-martial or to be appointed as president of a court-martial or to sit on a court-martial as a member as if he were an officer of the Indian Navy subject to naval law.

(2) The expression "superior officer" wherever used in this Act shall be deemed to include an officer of the Royal Navy when serving under conditions specified in sub-section (1).

* * * * *

M. N. KAUL,
Secretary.